TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted]

No. [redacted]

THE UNITED STATES EX REL. SKINNER AND EDDY CORPORATION, PETITIONER,

vs.

J. R. McCARL, COMPTROLLER GENERAL OF THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED DECEMBER [redacted], [redacted]

CERTIORARI GRANTED JANUARY [redacted], [redacted]

(31,570)

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1956

No. 847

(31,370)

(31,570)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 847

THE UNITED STATES EX REL. SKINNER AND EDDY CORPORATION, PETITIONER,

vs.

J. R. McCARL, COMPTROLLER GENERAL OF THE UNITED STATES

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 6, 1926

Court of Appeals of the District of Columbia.

No. 4345.

UNITED STATES OF AMERICA ex Relatione SKINNER AND EDDY CORPORATION, a Corp., Appellant,

vs.

J. R. McCARL, Comptroller General of the United States.

a Supreme Court of the District of Columbia.

At Law.

No. 69405.

UNITED STATES OF AMERICA ex Relatione SKINNER AND EDDY CORPORATION, a Corporation, Petitioner,

vs.

J. R. McCARL, Comptroller General of the United States, Respondent.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Petition for Writ of Mandamus.*

Filed October 11, 1924.

In the Supreme Court of the District of Columbia.

At Law.

No. 69405.

UNITED STATES OF AMERICA ex Relatione SKINNER AND EDDY CORPORATION, a Corporation, Petitioner,

vs.

J. R. McCARL, Comptroller General of the United States, Respondent.

To the Supreme Court of the District of Columbia:

The petition of relator respectfully shows unto the Court as follows:

1. That the relator, Skinner and Eddy Corporation, is a corporation organized and existing under the laws of the State of Washington, and files this petition in its own right as hereinafter set forth.

2. That the respondent, J. R. McCarl, is the Comptroller General of the United States, duly appointed and qualified, and as such has control and direction of an establishment of the United States Government known as the General Accounting Office, and is sued in his official capacity.

3. That on the 28th day of December, 1920, the relator filed with the Auditor for the State and Other Departments, an Accounting Officer of the Treasury Department of the United States, a claim on its behalf against the United States in the sum of $24,247,110.[illegible] the said claim showing credits amounting to $6,230,142.60, leaving a net amount due relator of $18,016,970.71; that on Septem-2 ber 20, 1924, relator was advised by the Comptroller General of the United States (the successor to the said Auditor and all other Accounting Officers of the Treasury Department, as hereinafter appears) that it did not appear from the records of the former office of the Auditor for the State and Other Departments that the claim of relator, submitted December 28, 1920, was received and accepted by the former Auditor as a claim against the United States, but on the contrary it appeared that the matter was regarded as a claim against the United States Shipping Board Emergency Fleet Corporation and as such was transmitted to said Fleet Corporation for proper action, all of which appears from the letter of transmittal dated September 20, 1924, copy of which is attached hereto and made a part hereof, marked "Exhibit A."

4. That it is provided by the Act of Congress approved June 10, 1921, commonly known as the "Budget and Accounting Act," that all powers and duties theretofore conferred or imposed by law upon the Comptroller of the Treasury or the six Auditors of the Treasury Department should, so far as not inconsistent with said Act, be vested in and imposed upon the General Accounting Office, and be exercised without direction from any other officer.

That said Act of Congress also provides by Section 305 thereof, as follows:

"Sec. 305. Section 236 of the Revised Statutes is amended to read as follows:

"Sec. 236. All claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the Government is concerned, either as debtor or creditor, shall be settled and adjusted in the General Accounting Office."

3 5. That on the 8th day of September, 1924, the relator submitted to the General Accounting Office of the United States a claim against the United States amounting to $22,254,387.47. Said claim was submitted to said Office by letter of transmittal dated August 22, 1924, copy of which is attached hereto and made a part hereof, marked "Exhibit B," from

which it will appear that said claim was presented without any waiver on the part of relator of its claim that the contracts under which the claim arose were contracts of the United States Shipping Board Emergency Fleet Corporation and not of the United States, and this petition is presented without any waiver of relator's contention in that regard and of its right to proceed against said Fleet Corporation.

6. That by said letter of September 20, 1924, (Exhibit "A"), the Comptroller General declined to take action on the claim referred to in the last preceding paragraph hereof until after final determination of a certain suit pending in the United States District Court for the Western District of Washington, Northern Division, which said suit relator alleges is a suit filed by relator against the United States Shipping Board Emergency Fleet Corporation.

7. That it is the duty of the said respondent, the Comptroller General, by virtue of his official position as constituted by law, to consider and determine all claims lawfully submitted to said General Accounting Office as promptly and expeditiously as the facilities of his office will permit, there being no authority or discretion conferred upon him by virtue of his said office or by law to withhold action upon claims so submitted until independent litigation between the claimant and other parties shall have been concluded or otherwise to the prejudice of claimant's rights or interests, and the said action of the said respondent in so withholding action on relator's said claim was accordingly without authority of law, and prejudicial to relator's interests, as hereinafter set forth.

8. That the United States Shipping Board Emergency Fleet Corporation claims to have a right of action against relator by virtue of certain claims or demands and on which the said Fleet Corporation was at all times prior to the 10th day of April, 1923, legally authorized to sue said relator in a court of law, and petitioner says that in opposition to said action, if so commenced, the relator might legally have interposed in defense thereof and as a credit or set-off thereto the said claim presented to the Comptroller General on September 4, 1924.

9. That on May 1, 1923, relator filed suit in the State Court at Seattle, Washington, against the United States Shipping Board Emergency Fleet Corporation for $70,129,401.14, exclusive of all credits or counterclaims, said suit being founded on contracts between the said Fleet Corporation and relator, and all of the items forming the total of the claim upon which suit was brought are included in the claim filed September 4, 1924, with the General Accounting Office, that said suit was removed by the Fleet Corporation to the United States District Court for the Western District of Washington, Northern Division, and is the same suit mentioned in the respondent's letter of September 20, 1924 (Exhibit "A"), that the United States Attorney for the Western District of Washington appeared in said cause by direction of the Attorney General of the United States and filed a motion to dismiss the suit on the ground, among others, that the suit was a claim against the United States, and which said motion is still pending and un-

determined, that in said suit the United States Shipping Board Emergency Fleet Corporation has contended, and now contends, that the same is founded on a cause of action against the United States and not against the Fleet Corporation, for the reason that the contracts involved in said suit were executed by the Fleet Corporation solely as agent for the United States and not in its individual corporate capacity, that relator is advised, and on information and belief alleges, that the United States, in its proposed suit against relator, hereinafter referred to in paragraph numbered "10" hereof, will allege and assert said contention, and will seek to sustain and establish the same.

10. That on the said 16th day of April, 1923, the said United States Shipping Board Emergency Fleet Corporation executed an instrument in writing whereby it purported to assign to the United States "all the goods, chattels, bonds secured by mortgages, bonds, notes, shares of stock, contracts, securities, claims, personal property, and choses in action, including accounts against divers persons for the payment of money, and all personal property of every kind and description whatsoever, wheresoever the same may be situated", theretofore acquired by the said Fleet Corporation and not theretofore disposed of by it, and at that time remaining under the disposition or control of the said Fleet Corporation; that the United
6 States now claims by virtue of the said assignment to be the owner and holder of a claim against relator being the same claim asserted against relator prior to the said 16th day of April, 1923, by the said Fleet Corporation, and referred to in paragraph numbered "8" of this petition, and which said claim grows out of the same contracts and transactions upon which suit is now pending, as hereinbefore recited in paragraph numbered "9" of this petition, and the said United States Government has declared, through its attorneys and agents, that it is now in active preparation to file suit against relator on such claim, and that such suit will be filed within the immediate future, and relator therefore alleges it to be a fact that it is the purpose of the United States to institute suit on said assigned claim within the near future.

11. That suit when filed by the United States will be filed in the United States District Court for the Western District of Washington, Northern Division, and that the Honorable Edward E. Cushman, presiding in said court, did, on the 8th day of February, 1924, in the case of United States vs. Fisher Flouring Mills Company, reported in 295 Federal Reporter, at page 691, hold that in a suit brought by the United States on a cause of action assigned to it by the United States Shipping Board Emergency Fleet Corporation the defendant is not permitted, in view of the provisions of Section 951 of the United States Revised Statutes, to plead as a credit, setoff or counterclaim, a claim against the said Fleet Corporation, unless the same shall have been first submitted to the Accounting Officers of the Treasury Department and acted upon.

12. That unless action is taken by the said Comptroller
7 General of the United States on the claim of relator filed in the General Accounting Office on September 1, 1924, a

aforesaid, the relator, when suit is filed against it by the United States as contemplated, as hereinbefore recited, will, in view of the said decision of the said Honorable Edward E. Cushman, be subjected to the hazard of losing its right to interpose as a credit, counterclaim, or set-off to said action, the said claim filed on September 4, 1924, and relator will be irreparably damaged by reason thereof; that inasmuch as the United States has contended and still contends, in the said suit now pending against the Fleet Corporation in the said United States District Court, that relator's cause of action is solely against the United States, the United States is without lawful right through its officers charged with consideration thereof to refuse to hear and consider said claim until after said litigation is determined and relator has been compelled to defend a suit to which it would have a complete defense by way of credit, counterclaim, or set-off but for the refusal of the respondent to act in the premises.

13. That on the 25th day of September, 1924, relator, through its attorneys, addressed a letter to the respondent, copy of which is attached hereto and made a part hereof as Exhibit "C", which said letter was delivered at the office of the respondent on the 26th day of September, 1924, and from which it will be seen that said respondent was again requested to give prompt consideration to said claim and a full explanation was made of the necessity for early consideration thereof; that respondent replied to said letter by letter dated October 6, 1924, copy of which is attached hereto as Exhibit "D" and made a part hereof, from which it will appear that the respondent has again refused, and still refuses, to take action on said claim as by law he is required to do.

Wherefore, premises considered, relator prays:

1. That a writ of mandamus may issue out of this Honorable Court addressed to the respondent, J. R. McCarl, Comptroller General of the United States, commanding him to consider and act upon the said claim of the relator submitted to the General Accounting Office of the United States on the 4th day of September, 1924, and that a rule be issued commanding said respondent to show cause on or before a day certain why the said writ of mandamus should not be issued for the purpose aforesaid; and

2. That relator be granted such other and further relief in the premises as may be just and meet.

SKINNER AND EDDY CORPORATION,
By J. BARRETT CARTER,
Attorney.

J. BARRETT CARTER,
GEO. V. TRIPLETT, Jr.,
Attorneys for Relator.
LOUIS TITUS,
Of Counsel.

DISTRICT OF COLUMBIA, ss:

J. Barrett Carter, being first duly sworn on oath deposes and says:

That he has read the foregoing petition subscribed by the Skinner and Eddy Corporation by him as attorney; that he has full authority to sign said petition; and that the facts therein stated are within his personal knowledge; that the reason this verification is made by him as attorney is that there is no officer or agent of said corporation present within the jurisdiction of this Court; that the facts stated in said petition affiant verily believes to be true.

J. BARRETT CARTER.

Subscribed and sworn to before me this 15th day of October, 1924.

[NOTARIAL SEAL.] EDITH M. STEVENS,
Notary Public, D. C.

EXHIBIT "A."

Comptroller General of the United States,
Washington,
Sept. 20, 1924.

In re A-4880.

J. Barrett Carter,
George V. Triplett, Jr.,
Attorneys for the Skinner & Eddy Corporation,
Insurance Building,
Washington, D. C.

GENTLEMEN:

Having reference to your letter of August 20, 1924, relative to the claim against the United States Shipping Board Emergency Fleet Corporation, said to have been filed in the Office of the Auditor for the State and Other Departments on or about December 28, 1920, on behalf of the Skinner & Eddy Corporation of Seattle, Wash. (referred by Louis Titus, Attorney, Washington Building, Washington, D. C.), you are advised that it does not appear from the records of the [illegible] Office of the Auditor for the State and Other Departments [illegible] now on file in this office, that the claim of the Skinner & Eddy Corporation, as submitted in December, 1920, was received and accepted by the former auditor as a claim against the United States; but on the contrary, it appears that the matter was regarded as a claim against the United States Shipping Board Emergency Fleet Corporation and as such was transmitted to said corporation for appropriate action. Correspondence concerning the merits of said claim should be addressed to the United States Shipping Board Emergency Fleet Corporation.

With respect to the claim for $2,534,287.47, filed in the office on behalf of the Skinner & Eddy Corporation, September 4, 1924, to cover various items alleged to be due from the United States in the event that it is held that the contracts in question were contrary

of the United States and were cancelled by the United States, or that said contracts were assigned to the United States by the United States Shipping Board Emergency Fleet Corporation, or that said corporation was acting solely as agent of the United States, you are advised that it appearing that a suit involving the subject matter of the claim as filed is now pending in the District Court for the Western District of Washington, Northern Division, no action will be taken by this office on said claim at this time, but the papers will be filed pending final action by the courts and request on behalf of claimant for consideration thereafter.

Respectfully,

(Sgd.) J. R. McCARL,
Comptroller General.

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EXHIBIT "B"

Skinner & Eddy Corporation,
White Building,
Seattle, U. S. A.

August 22, 1924.

To the General Accounting Office of the United States, Washington, D. C.

Attention: Honorable Comptroller General.

Sir:

Skinner & Eddy Corporation submits herewith its claim against the United States amounting to $2,254,287.47. A statement is attached thereto showing the various items going to make up the total amount of the said claim, and these items are all supported by vouchers also filed herewith.

The several contracts mentioned or referred to in the statement of the claim were all executed in duplicate, and a duplicate original should be on file with the United States Shipping Board Emergency Fleet Corporation, and is of course available for your consideration in the determination of this claim.

The items "Value of Cancelled Contracts" and "Damages Breach Contract" are duplications in part, that is to say, the allowance of the latter would eliminate the former.

The Skinner & Eddy Corporation believes that the foregoing claim is a direct claim against the United States Shipping Board Emergency Fleet Corporation by reason of its belief that the contracts out of which the foregoing claim arises were contracts between the said Skinner & Eddy Corporation and the United States Shipping Board Emergency Fleet Corporation, and not contracts with the United States, but inasmuch as the United States claims that these contracts were contracts of the United States, and also claims that the cancelled contracts were cancelled by the United States, the foregoing claim is presented against the United States to apply in the event that it be

held that these contracts are contracts of the United States and or were cancelled by the United States. The foregoing claim is also presented against the United States for the reason that claimant is informed and believes that the United States Shipping Board Emergency Fleet Corporation has assigned to the United States all its rights arising under or growing out of said contracts, in
12 which event the foregoing claim is properly against the United States as a set-off and or counterclaim to the claim of the United States which it received by assignment from the United States Shipping Board Emergency Fleet Corporation.

The foregoing claim is also presented against the United States by reason of the claim asserted in the suit now pending between the Skinner & Eddy Corporation and the United States Shipping Board Emergency Fleet Corporation in the United States District Court for the Western District of Washington, Northern Division, that in executing the said contracts the United States Shipping Board Emergency Fleet Corporation was acting as agent of the United States, and not in its individual capacity, so that in the event it should be held that the said United States Shipping Board Emergency Fleet Corporation was acting solely as agent of the United States in making said contracts, the foregoing claim is properly a claim against the United States as a set-off or counterclaim to the claim of the United States.

This claim is presented without any waiver on the part of the Skinner & Eddy Corporation of its contention that the said contracts were contracts between the said Skinner & Eddy Corporation and the United States Shipping Board Emergency Fleet Corporation, and without any waiver of its claim that the cancelled contracts were cancelled by the United States Shipping Board Emergency Fleet Corporation, and without waiver of its claims as asserted in said suit now pending against the said United States Shipping Board Emergency Fleet Corporation.

Respectfully submitted,

SKINNER & EDDY CORPORATION,
By D. E. SKINNER,
President.

Attest:
L. B. STEDMAN,
Secretary.

13 EXHIBIT "C."

Law Offices of

J. Barrett Carter, Geo. V. Triplett, Jr.,

Insurance Building, Washington, D. C.

September 25, 1924.

Honorable J. R. McCarl,
Comptroller General of the United States,
Washington, D. C.

DEAR SIR:

In re A-4889, Skinner & Eddy Corporation.

We have your letter of September 20, 1924, advising that the claim of the Skinner & Eddy Corporation filed with the Auditor for the State and Other Departments on December 28, 1920, had been transmitted to the United States Shipping Board Emergency Fleet Corporation for appropriate action, the same being considered a claim against the Fleet Corporation and not against the United States, and also advising with respect to claim for $32,354,387.47, filed with your office on September 4, 1924, that no action will be had on said claim pending final action by the courts in the litigation now pending in the District Court for the Western District of Washington, Northern Division.

We respectfully request a reconsideration of your action in withholding consideration of the claim filed September 4, 1924, until after the litigation now pending in the District Court for the Western District of Washington, Northern Division, has been finally determined, for the following reasons:

In the suit filed by the Skinner & Eddy Corporation against the Fleet Corporation and now pending in the United States District Court for the Western District of Washington, Northern Division, the Fleet Corporation has made the contention that the suit should properly have been brought against the United States, and while we believe this contention to be unsound, the fact remains that there is a difference of opinion on the part of opposing counsel on this question which the Court must ultimately determine. However, the real difficulty is that the Fleet Corporation has made an assignment to the United States Government of an alleged claim against the Skinner & Eddy Corporation and the Government Attorneys have announced that suit will shortly be filed against the Skinner & Eddy Corporation on this assigned claim. If the claim had been asserted by the Fleet Corporation before assignment, the Skinner & Eddy Corporation could have shown credits sufficient to offset it, even assuming its validity, and since the claim has been assigned to the United States Government, obviously and in good conscience the Skinner & Eddy Corporation should not be placed in any worse position than it would be if suit were filed by the Fleet

Corporation, and should therefore be entitled to offer as against the United States any credit it could have offered against the Fleet Corporation.

However, Section 951 of the Revised Statutes provides that "In suits brought by the United States against individuals, no claim for a credit shall be admitted upon trial, except such as appear to have been presented to the Accounting Officers of the Treasury for their examination, and to have been by them disallowed, in whole or in part."

Under this law we are advised that Judge Cushman, presiding in the District Court for the Western District of Washington, Northern Division, has held that where suit was brought by the United States on an assigned claim from the Fleet Corporation, the defendant could not offer as a credit another claim against the Fleet Corporation without the same having first been presented to the Accounting Officers of the Treasury and disallowed. Whether this is sound law we do not at this time either admit or question, but since the Court which will in the first instance hear the suit about to be filed by the United States has taken this view, the Skinner & Eddy Corporation should not be placed in the position of having to establish its right to the credits by appeal, even assuming that Judge Cushman's decision would not be sustained.

We have stated the foregoing fully and frankly in order that you may see the necessity for prompt action on the claim filed. It is our contention, however, that there is no discretion lodged in the Comptroller General to delay action upon and determination of the claim filed pending the conclusion of litigation between Skinner & Eddy Corporation and the Fleet Corporation.

We therefore respectfully request immediate consideration of the claim filed September 4, 1923.

J. BARRETT CARTER,
GEO. V. TRIPLETT, Jr.
Attorneys for Skinner & Eddy Corporation.

13 Copy.

EXHIBIT D.

Comptroller General of the United States.

Washington.

Oct. 6, 1923.

In re: A-4800.

J. Barrett Carter,
Geo. V. Triplett, Jr.,
Insurance Building,
Washington, D. C.

GENTLEMEN:

I have your letter of the 25th ultimo, requesting that further consideration be given to the matter contained in letter dated September 20, 1923, wherein you were advised that no action by this

other would be taken at this time on the claim filed by you September 4, 1924, on behalf of the Skinner & Eddy Corporation of Seattle, Washington, against the United States Shipping Board Emergency Fleet Corporation, it appearing that a suit involving the subject matter of the claim is now pending in the District Court for the Western District of Washington, Northern Division. You state as the reason for your request that the United States Shipping Board Emergency Fleet Corporation has made an assignment to the United States Government of an alleged claim against the Skinner & Eddy Corporation and that the attorneys for the Government have announced their intention of shortly instituting suit on the assigned claim and that, in view of the ruling of the court in *United States v. Fisher Flouring Mills Co.*, 295 Fed. Rep. 691, on the provisions of section 951, Revised Statutes, final action on the claim by this office is desired.

Section 951, Revised Statutes prohibits, in suit brought by the United States against individuals, except under certain specified conditions, the admission, upon trial, of claims for credit except such claims as have been presented by the defendant to the accounting officers of the Government for their examination and have been disallowed either in whole or in part, and the ruling of the court in the case cited was to the effect that the defendant was not entitled, in a suit by the United States on a cause of action assigned to it by the Fleet Corporation, to plead as a set-off claims against the Fleet Corporation that have not been presented to the accounting officers as required by this section of the Revised Statutes.

The matter does not at this time appear to require action by this office under the provisions of section 951, Revised Statutes, on the claim of the Skinner & Eddy Corporation, no suit against the corporation having as yet been filed. The United States Shipping Board has been requested, however, to furnish a report on the matter and when received you will be further addressed in the matter.

Respectfully,
(Signed) J. R. McCARL,
Comptroller General.

Respondent's Answer to Petition.

Filed October 17, 1924.

* * * * * * *

J. R. McCarl, Comptroller General of the United States, respondent herein, now and at all times saving and reserving unto himself the benefit of all manner of objections and exceptions to the errors and insufficiencies to the petition filed herein, and reserving unto himself the lack of jurisdiction of the Court appearing on the face of the petition to grant the relief prayed for, and the lack of jurisdiction of the Court to direct him as Comptroller General of the

United States to perform the act or acts in question, and relying on the same as if motion to dismiss had been specifically interposed, nevertheless answering so much and such parts of the petition and the rule to show cause as he admits it necessary for him to make answer thereto says as follows:

(1) The averments of fact contained in paragraph 1 of the petition are admitted.

(2) The averments of fact contained in paragraph 2 of the petition are admitted.

(3) The averments of fact contained in paragraph 3 of the petition are admitted by respondent except as hereinafter denied, explained and qualified.

Petitioner's claim dated December 28, 1920, submitted by petitioner to the Auditor for the State and Other Departments was accompanied by letter of transmittal, a true copy of which is hereto attached, marked Exhibit "A" and made a part hereof, which reads in part as follows:

"I submit herewith for consideration by your office claim on behalf of the Skinner & Eddy Corporation of Seattle, Washington, against the United States, amounting to $24,247,119.31. The claim as submitted shows the United States to be entitled to credits totalling $6,230,142.60, leaving the net amount due to Skinner & Eddy Corporation $18,016,976.71."

The Auditor for the State and Other Departments, on January 17, 1921, transmitted the said claim to the United States Shipping Board Emergency Fleet Corporation, and on January 19, 1921, Admiral W. S. Benson as Chairman of the United States Shipping Board, acknowledged receipt of said claim by letter addressed to The Auditor for the State and Other Departments, a copy of which letter is hereto attached and made a part hereof and marked Exhibit "B". On June 15, 1921, the petitioner filed a suit against the United States in the Court of Claims in substantially the same amount and covering the same items as were included in the claim against the United States submitted to the Auditor for the State and Other Departments.

(4) Respondent admits that Congress passed an Act approved June 10, 1921, designated as the "Budget and Accounting Act," which act contains the provisions quoted by petitioner in paragraph 4 of its petition.

(5) Respondent admits that the Relator submitted to the General Accounting Office on September 4, 1923, a claim against the United States amounting to $12,374,387.47, accompanied by a letter of transmittal, of which Exhibit "B" attached to Relator's petition is a copy.

Respondent denies the conclusion of law asserted by the Relator that in presenting said claim Relator did not waive its contention that said claim was, and is, a claim against the United States Shipping Board Fleet Corporation and refers the Court to the claim and

the said letter of transmittal for its determination as to the legal effect thereof.

(6) The averments of fact contained in paragraph 6 of the petition are admitted in so far as it is alleged therein that on the 20th day of September 1924 Respondent herein as Comptroller General of the United States declined to take action on the claim of petitioner, referred to in paragraph 5 of the petition, until after final determination of a suit pending in the United States District Court for the Western District of Washington, Northern Division, wherein petitioner herein is the plaintiff and the United States Shipping Board Emergency Fleet Corporation is the defendant and which suit involves the same subject matter as is involved in the claim that was transmitted to the General Accounting Office by petitioner herein on the 4th day of September 1924 as averred in paragraph 5 of the petition, excepting that in said letter of September 20, 1924, a copy of which is attached to the petition as Exhibit "A," it is stated that papers will be filed pending final action by the Courts and requests on behalf of claimant for consideration thereafter.

Respondent further avers that at no time did the General Accounting Office under the control and direction of the Comptroller General of the United States refuse to take jurisdiction of said claim submitted by petitioner against the United States to the General Accounting Office on the 4th day of September 1924.

(7) For answer to paragraph 7 of the petition, respondent admits that it is the duty of the Comptroller General of the United States by virtue of his official position as constituted by law, to consider and determine all claims lawfully submitted to the General Accounting Office of which the General Accounting Office has jurisdiction by law as promptly and expeditiously as the facilities of his office will permit, but Respondent avers that the claim submitted to the General Accounting Office by petitioner on the 4th day of September 1924 arises out of contracts and transactions between the Skinner & Eddy Corporation, petitioner herein, and the United States Shipping Board Emergency Fleet Corporation, previous to June 5, 1920, and that an act of Congress approved June 5, 1920, entitled "An Act to provide for the promotion and maintenance of the American Merchant Marine, to repeal certain emergency legislation, and provide for the disposition, regulation and use of property acquired thereunder and for other purposes" confers jurisdiction upon the United States Shipping Board to adjust, settle and liquidate all claims arising out of or incident to the exercise of the powers vested in the President by the Emergency Shipping Fund Provision of the Act of June 15, 1917, and subsequent amendatory acts.

Respondent denies Relator's conclusion of law that there is no authority or discretion conferred upon him by virtue of his office and by law to withhold action upon claims submitted to him until litigation involving the identical subject matter between the claimant and agents of the United States shall have been concluded.

Respondent further avers that where claims are filed with the Gen-

eral Accounting Office for determination and are pending in the United States Courts it has been and is now the rule of the General Accounting Office to hold the determination of said claims in abeyance until the litigation shall have been concluded. Such has been the practice of the Accounting Officers of the United States for many years.

Respondent denies that the letter addressed to Relator and attached to the petition as Exhibit "A" and the action thereon taken was without authority of law and prejudicial to Relator's interest.

(8.) Respondent denies any official information or knowledge sufficient to justify an opinion or belief as to the truth of the allegations of paragraph 8 of the petition.

Respondent alleges that if the claim submitted to him on September 4, 1924, is a proper set-off to the claims which Relator alleges the Emergency Fleet Corporation may have, such presumed and supposed claim by the Emergency Fleet Corporation must arise out of acts performed, or contracts made by the Fleet Corporation while acting under delegated authority from the President pursuant to the Executive Order of July 11, 1917, delegating to said Emergency Fleet Corporation certain powers vested in the President by the Emergency Shipping Fund Provisions of the act of June 15, 1917.

Respondent further avers that by virtue of sections 2 and 4 of the Merchant Marine Act approved June 5, 1920, all property and interests of whatever kind acquired by the Emergency Fleet Corporation while acting as a delegate of the President under the powers conferred upon him by the act of June 15, 1917, were transferred to the United States Shipping Board, an independent establishment of the Government of the United States, and all contracts or agreements lawfully entered into prior to June 5, 1920, were to be assumed and carried out by the United States Shipping Board. That by reason of said act of Congress the Emergency Fleet Corporation was divested of all interest in any claims against the Relator and was, and is without legal authority to assert ownership of such claims.

(9.) Respondent says that he is informed and believes that on May 1, 1923, Relator filed suit in the State Court at Seattle, Washington, against the United States Shipping Board Emergency Fleet Corporation for $9,129,401.14 exclusive of all credits or counterclaims, said suit being founded on contracts between said Fleet Corporation and Relator and all of the items forming the total of said claim upon which said suit was brought are included in the claim filed September 4, 1924 with the General Accounting Office. That said suit was removed by the Emergency Fleet Corporation to the United States District Court for the Western District of Washington, Northern Division, and is the same suit mentioned in respondent's letter of September 20, 1924 (Exhibit "A" herein).

Respondent further avers that he has no official information or knowledge of the defense that is being made and therefore he does not either admit or deny the statements of fact contained in paragraph 9 of the petition in reference to defense that will be made

to said suit or to the issues that may be formed by the pleadings thereon.

(10) Respondent denies any knowledge or information sufficient to form an opinion or belief as to the truth of the allegation that the United States Shipping Board Emergency Fleet Corporation executed an instrument in writing purporting to assign to the United States the property set forth in paragraph 10 of the petition as having been transferred. Respondent further avers that he has no information or knowledge sufficient to justify an admission or denial of the allegations contained in paragraph 10 of the petition in reference to any proposed suit on said assigned claim.

(11) Respondent denies that the Honorable Edward E. Cushman, United States Judge for the Western District of Washington, Northern Division, held in the Fisher Flouring Mills case referred to by Relator, that the cause of action therein sued upon by the United States was maintained by virtue of an assignment made to the United States by the United States Shipping Board Emergency Fleet Corporation and refers to the printed report of the decision of the Court in said case for the language employed by the Court in its decision.

(12) Respondent denies the conclusion of law asserted by the Relator in paragraph 12 of the petition that because of the decision of Judge Cushman in the Fisher Flouring Mills case the Relator will be subjected to the hazard of losing its right to interpose its credit, counter claim or set-off in any action that may be brought by the United States and denies the Relator's conclusion of law that the General Accounting Office under the control and direction of the Comptroller General of the United States is without lawful right to defer consideration of any claim until after the litigation based upon such claim shall have been concluded.

Respondent denies any knowledge or information sufficient to form a belief as to the truth of the allegation that the Relator has a complete defense to any proposed suit by the United States or that it has any defense to such claim.

(13) Respondent admits the allegations of paragraph 13 of the petition except that conclusions of law therein that he is required to either admit or allow the claim presented by Relator or to consider the same in advance of other cases that were pending before the General Accounting Office for determination at the time that Relator's claim was submitted to said office.

Respondent further avers that on the 4th day of September 1924, the same being the date on which Relator's claim was submitted to the General Accounting Office, there were pending before said General Accounting Office for determination approximately eleven thousand three hundred and sixty three cases.

Further answering the respondent says that by virtue of the provisions of the Merchant Marine Act of June 5, 1920, hereinbefore referred to authority to settle, liquidate and adjust claims arising out of the exercise by and through the President of the powers and duties imposed upon the President by the act of June 15, 1917, and subsequent acts amendatory thereof, was vested in the United States Shipping Board and that the claims sub-

mitted by the Relator to the Auditor for the State and Other Departments as aforesaid and the claims submitted to this Respondent as set forth in Relator's petition were claims arising out of the exercise by and through the President of the powers and duties imposed upon him by said act.

J. R. McCARL.

JNO. M. LEWIS,
Counsel for the Comptroller General of the United States.
PEYTON GORDON,
United States Attorney,
Attorneys for Respondent.

DISTRICT OF COLUMBIA, ss:

I, J. R. McCarl, having first been duly sworn on oath, depose and say:

That I have read the foregoing answer and know the contents thereof, and that the matters and things therein stated I verily believe to be true.

J. R. McCARL.

Sworn and subscribed to before me, this 16th day of October, 1924.
[NOTARIAL SEAL.] S. R. TULLOSS,
Notary Public.

25 EXHIBIT "A."

Louis Titus,

Westory Building, Washington, D. C.

December 28, 1920.

To the Honorable the Auditor for the State and other Departments,
Washington, D. C.

SIR:

I submit herewith for consideration by your office claim on behalf of the Skinner and Eddy Corporation, of Seattle, Washington, against the United States, amounting to $24,247,119.31. The claim as submitted shows the United States to be entitled to credits totaling $6,230,142.60, leaving the net amount due the Skinner and Eddy Corporation $18,016,976.71.

A statement is inclosed, showing the various items going to make up the total amount of the claim, and these items are all supported by vouchers, also filed herewith.

The several contracts mentioned in the statement of the claim were all executed in duplicate, and a duplicate original should be on file with the United States Shipping Board Emergency Fleet Corporation and is of course available for your consideration in the determination of this claim.

May I ask that this claim be given your early consideration.

Respectfully,

(Signed) LOUIS TITUS,
Attorney for Skinner and Eddy Corporation.

JBC mlc

26 EXHIBIT "B"

January 19, 1921.

The Honorable the Auditor for State & Other Depts.,
Washington, D. C.

SIR:

Your letter of January 17, 1921, with accompanying file relating to claim of Skinner & Eddy Corporation of Seattle, Washington, against the United States Shipping Board Emergency Fleet Corporation for $18,016,976.71, is received.

This claim will receive early consideration and the determination of the Board relating thereto will be promptly transmitted to you.

Respectfully,

_____,
Chairman.

EMH-GW

Demurrer to Answer.

Filed October 23, 1924

* * * * * * *

Comes now the relator, by its attorneys, and demurs generally to the answer of the respondent filed herein, and says that the said answer is bad in substance.

J. BARRETT CARTER,
GEO. V. TRIPLETT, JR.,
Attorneys for Relator.

27 *Note.*

Among the points to be argued in support of the foregoing demurrer are the following:

1. Said answer is evasive and indefinite, and does not state any facts constituting a defence to the relator's petition.

2. The legal conclusions of the respondent stated in said answer are not correct or valid in law.

3. Under the admissions of said answer it appears that the respondent is under the legal duty to take the action requested by relator, and which action respondent has refused.

4. It appears by the admissions and allegations of said answer that respondent has and admits to have jurisdiction of the claim filed by relator, and nevertheless respondent has arbitrarily refusal to take

action thereon or to exercise the statutory powers vested in him to allow or reject said claim.

J. BARRETT CARTER,
GEO. V. TRIPLETT, Jr.,
Attorneys for Relator.

Hon. John M. Lewis,
Counsel for the Comptroller General of the United States.
Hon. Peyton Gordon,
United States Attorney.

Please take notice that the foregoing demurrer will be for hearing on Friday, the 31st day of October, 1924.

J. BARRETT CARTER,
GEO. V. TRIPLETT, Jr.,
Attorneys for Relator.

28 Service of a copy of the foregoing demurrer accepted this 23rd day of October, 1924.

PEYTON GORDON,
By VERNON E. WEST,
Attorney for Respondent.

Order Overruling Demurrer.

Filed January 7, 1925.

* * * * * * *

This cause came on to be heard at this term upon the demurrer of the relator, Skinner & Eddy Corporation, to the answer of the respondent, J. R. McCarl, Comptroller General of the United States, and the attorney for the said respondent having stated in open court that the answer of said respondent should be considered as definitely denying that the said respondent had jurisdiction to consider the claim presented to him as alleged in the petition of said relator, and thereupon, upon consideration thereof, it is, by the court, this 6th day of January, 1925,

Ordered and adjudged that the demurrer of the relator to the answer of the said respondent be, and the same hereby is, overruled, to which said ruling of the court the relator duly objects and excepts.

It is further ordered that relator shall have ten days from this date to plead to or traverse said answer if it shall be so advised.

WENDELL P. STAFFORD,
Justice.

29 *Plea and Traverse of Relator to Answer of Respondent*

Filed January 9, 1925.

* * * * * * *

Comes now the relator, Skinner & Eddy Corporation, and without waiving its demurrer to the answer of respondent filed herein, for a plea and traverse to said answer says:

1. Relator, Skinner & Eddy Corporation, traverses and denies in manner and form as alleged each and every averment of fact in said answer, save in so far as said averments admit the allegations of relator's petition or are hereinafter specifically pleaded to.

2. For a plea to that part of paragraph three of said answer wherein it is alleged:

"On June 15, 1921, the petitioner filed suit against the United States in the Court of Claims in substantially the same amount and covering the same items as were included in the claim against the United States, submitted to the Auditor for the State and Other Departments."

relator says that said suit was voluntarily dismissed without prejudice on motion of relator on April 4, 1923, which said order of dismissal was subsequently set aside by the Court of Claims, but on mandamus from the Supreme Court of the United States (In re Skinner & Eddy Corporation, 265 U. S. 86) was restored on the 16th day of May, 1924, and said suit was dismissed, so that said suit is not now pending and was not pending on the 4th day of September, 1924, and has never been decided on its merits.

3. For a plea to that part of paragraph thirteen of said answer wherein it is alleged:

"Further answering the respondent says that by virtue of the provisions of the Merchant Marine Act of June 5, 1920, hereinbefore referred to, authority to settle, liquidate and adjust claims arising out of the exercise by and through the President of the powers and duties imposed upon the President by the act of June 15, 1917, and subsequent acts amendatory thereof, was vested in the United States Shipping Board and that the claims submitted by the Relator to the Auditor for the State and Other Departments as aforesaid and the claims submitted to this Respondent as set forth in Relator's petition were claims arising out of the exercise by and through the President of the powers and duties imposed upon him by said act."

realtor says that the claims presented by relator to the Auditor for the State and Other Departments on December 28, 1920, and the claims presented by relator to respondent on September 4, 1924, did not arise out of the exercise by and through the President of the

powers and duties imposed upon the President by the Act of Jun
15, 1917, and subsequent acts amendatory thereof or any of sa
acts; that said claims are for moneys due and payable to the relato
growing out of certain transactions between the relator and the Unite
States Shipping Board Emergency Fleet Corporation, as will hereaf
after more fully appear. Attached hereto as Exhibits "E-1" to "E-4
inclusive, and Exhibits "E-6" to "E-10" inclusive, are copies
certain contracts entered into between the relator and said Fle
Corporation for the construction by relator of certain steam car
carrying vessels. Exhibit "E-5" is a written proposal dated May 1
1918, from the said Fleet Corporation to the relator, which was dul
accepted by the relator and therefore became a contract between th
relator and said Fleet Corporation, and said Exhibits "E-6" and "E-7
are copies of the contracts entered into in pursuance of said propos
of May 11, 1918. Exhibit "F" is a copy of the lease entere
31 into in pursuance of said letter of May 11, 1918, to carry o
the terms thereof relative to the lease and sale to relator
the real estate and property mentioned in said letter. Exhibits "G-1
to "G-8," inclusive, are orders given by the said Fleet Corporation
the relator for repair work on ships under the control of the s
Fleet Corporation. Exhibit "H" is a general order issued by t
Fleet Corporation directing the District officers of said Fleet Corpor
tion to reimburse shipbuilders for the increased labor cost of payi
off employees on the shipbuilders' time. Exhibit "K-1" is a telegra
from the said Fleet Corporation to relator, directing relator to s
pend all work upon twenty-five of the vessels which relator h
agreed to construct for the said Fleet Corporation under the contra
of June 1, 1918 (Exhibit "E-7") and July 18, 1918 (Exhibit "E-9"
and Exhibit "K-2" is a letter from the Vice-President of the Unit
States Shipping Board Emergency Fleet Corporation to the relat
cancelling said contract of June 1, 1918, to the extent of thirteen
the vessels agreed to be constructed thereunder, and cancelling s
contract of July 18, 1918, in its entirety.

That all of said exhibits are hereby made a part hereof as
incorporated herein.

That the claim presented by relator to the respondent on S
tember 4, 1924, as alleged in the original petition filed herein
made up of the following items, all arising out of or by reason
the contracts and other exhibits hereinbefore referred to, name

$697,500.00 of said claim is for payments due the relator
contract price for ships completed and delivered by t
32 relator to the said Fleet Corporation under said contracts
May 27, 1918 (Exhibit "E-6") and June 1, 1918 (Exhi
"E-7"), and the contracts amendatory and supplemental ther
(Exhibits "E-8" and "E-10").

$1,797,600.00 of said claim is for bonuses or premiums due rela
in accordance with the terms of said contracts for completing a
delivering certain vessels before the delivery dates fixed in said c
tracts.

$436,916.47 of said claim is for overtime payments required
be made by relator under the express written instructions of the s

Fleet Corporation for work done in the performance of said contracts, on national holidays, Saturday afternoons and at night;

$77,347.65 of said claim is for the additional expense involved in paying all employees on relator's time as required by General Order No. 38 of said Fleet Corporation (Exhibit "H");

$1,667,060.22 of said claim is for investment in the property agreed to be bought by relator from said Fleet Corporation under the contract of May 11, 1918 (Exhibit "E"), relator having entered into possession of said property under said contract and the lease entered into in pursuance thereof (Exhibit "F"), and having expended thereon the said sum in betterments and improvements, was later, on March 22, 1920, and after said contracts had been cancelled (see Exhibit "K 2"), forcibly dispossessed by the said Fleet Corporation, and prevented from carrying out the contract to purchase the same;

$166,277.12 of said claim is for taxes and other carrying charges paid by relator on the property agreed to be purchased under said contract of May 11, 1918;

$514,441.40 of said claim is for money paid to said Fleet Corporation by relator in accordance with the terms of said contract of May 11, 1918, and the lease entered into in pursuance thereof, all of which was lost to relator after said contracts were cancelled and relator was dispossessed from said property and prevented from completing its contract of purchase;

$2,079,452.35 of said claim is for loss on materials purchased by relator to be used on the vessels, the construction of which was prevented by the cancellation of said contracts by the letter of April 25, 1919 (Exhibit "K 2");

$626,067.52 of said claim is for materials taken over by the United States Shipping Board Emergency Fleet Corporation. This material was a portion of the stock on hand to be used in the construction of the vessels, the construction of which was prevented by the cancellation of said contracts, and which was taken over by the said Fleet Corporation after said contracts were cancelled, and for which it agreed to pay the relator the amount for which claim is made;

$332,013.42 of said claim is for moneys advanced by the relator to subcontractors, which was lost to relator by reason of the cancellation of said contracts;

$32,751.45 of said claim is for loss sustained by relator by reason of a strike covering the period January 21, 1919, to March 17, 1919, a period of fifty-five days, which said strike was caused and its immediate settlement prevented by the acts of the said Fleet Corporation;

$11,045.20 of said claim is for protested freight rates on materials to be used in the performance of said contracts, for which the relator was entitled to be reimbursed under the provisions of said contracts;

$65,565.45 of said claim is for extra work on, and additional costs caused by changes in the design of, the vessels constructed by relator for said Fleet Corporation;

$68,894.54 of said claim is for repairs made on vessels under control of said Fleet Corporation in accordance with the written instructions of the said Fleet Corporation, said written instructions being Exhibits "64-1" to "64-8", inclusive.

$2,793,175.83 of said claim is for loss in plant, machinery, equipment, etc., occasioned the relator by the cancellation of said contracts.

$6,000,000.00 of said claim is for the value of the cancelled contracts; and

$14,431,810.50 of said claim is for damages for breach of said contract.

The last two items being duplications in part, the allowance of the latter would eliminate the former.

That the claim presented to the Auditor for the State and Other Departments on December 28, 1920, grew out of the same contracts and transactions and is practically for the same items as the claim presented to the Comptroller on September 4, 1924.

SKINNER & EDDY CORPORATION
By J. BARRETT CARTER,
Attorney.

J. BARRETT CARTER,
GEO V. TRIPPLETT, JR.
Attorneys for Relator.
LOUIS TITUS,
Of Counsel.

35 DISTRICT OF COLUMBIA, *ss*

J. Barrett Carter, being first duly sworn, on oath deposes and says: That he has read the foregoing traverse and plea to the answer of the respondent, which said traverse and plea is subscribed by the Skinner & Eddy Corporation, by affiant as its attorney; that he has full authority to sign the same, and that the facts therein stated are within his personal knowledge; that the reason this verification is made by him as attorney is that there is no officer or agent of said corporation present within the jurisdiction of this court; that affiant verily believes the facts stated in said pleading to be true.

J. BARRETT CARTER.

Subscribed and sworn to before me, This 9th day of January, 1925.

[NOTARIAL SEAL.]

NINA I. THOMAS,
Notary Public, D. C.

36 RELATORS' EXHIBIT E-1

United States Shipping Board,
Emergency Fleet Corporation,
Washington.

May 28, 1917.

Skinner & Eddy Corporation,
Smith Building,
Seattle, Washington.

GENTLEMEN:

Our construction of Paragraph XI of the contract for six steel cargo carrying steamers made with you this day is that the Contractor must at all times pay at least the Navy Yard wages for same service. The contract establishes a minimum wage on the work; and gives the Owner the right to give the Contractor instructions which will prevent the Contractor, by the use of high wages, from robbing other yards. The owner has no desire under the contract to keep down the Contractor's wages, but the Owner must retain full control over the labor situation and cannot and will not give any assurances that it will not press the labor clause, and this letter is merely to be taken as our construction of the labor clause.

Very truly yours,

GEO. W. GOETHALS,
General Manager.

GHS MAW.

Accepted
SKINNER AND EDDY CORPORATION,
By LOUIS TITUS,
Atty-in-fact.

37 Contract (Lump-Sum Basis) for Completed Steamers—Pacific Coast

Contract made this 28th day of May, 1917, between the Skinner & Eddy Corporation, a corporation organized under the laws of the State of Washington, party of the first part (herein called the Contractor), and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia, party of the second part (herein called the Owner).

For valuable consideration, the receipt of which is hereby acknowledged by both parties, and in consideration of the mutual agreement of the parties, it is agreed as follows:

1 The contractor hereby agrees to construct, at its own risk and expense, in accordance with drawings and specifications hereto attached, and made a part of this contract, under the Rules and Regulations of the British Lloyd's to class 100 A1 for ocean-going vessels (or, if the Owner shall by writing so require, of the American

Bureau of Shipping), six steel cargo-carrying steamers. Attached hereto marked Schedule "A" and likewise to be approved by Theodore E. Ferris, is a partial statement of the specifications. The Contractor agrees to deliver said steamers complete with propelling machinery, auxiliaries, and equipment, according to the said drawings and specifications, to the Owner, afloat at the works of the Contractor at Seattle, Washington, as follows:

The first two steamers to be delivered within five months from the date of arrival of the keel plates, and of the remaining number of steamers, the building of the second two steamers shall be commenced immediately after the completion of the first two steamers and shall be delivered within five months after the laying of the keels, and the building of the remaining two steamers shall be commenced immediately after the completion of the second two steamers and shall be delivered within five months after the laying of the keels.

11 In consideration of the performance of this agreement by the Contractor, the Owner agrees to pay therefor a lump sum of
38 One million four hundred thousand dollars ($1,400,000) for each of such completed steamers. Such purchase price shall be paid in the manner hereinafter stated.

The Owner agrees to cause to be furnished at the Contractor's works certain steel material, which shall be ordered by the Contractor, at special prices arranged by the owner (freight to Contractor's yard to be paid by the Contractor) in amounts and on dates substantially as shown in Schedule "B" hereto attached which is made a part hereof. Such steel shall be ordered by the Contractor for the Owner's account and payments therefor at the prices shown in Schedule "B" shall be made by the Owner direct to the concerns furnishing such steel. All payments so made shall be deemed payments on account of the purchase price above stated. For the purpose of computing the amounts to be paid by the Owner direct to the Contractor the cost of such steel is figured approximately at $328,000 for each steamer. The balance of the purchase price is to be paid direct to the Contractor as follows: (a) $500,000 within 30 days after signing this contract, (b) twenty per cent of the contract price of each steamer when the keel thereof is laid, (c) twenty per cent of the contract price of each steamer when said steamer is completely framed, (d) twenty per cent of the contract price of each steamer when said steamer is plated, (e) ten per cent of the contract price of each steamer when said steamer is successfully launched, (f) five per cent of the contract price of each steamer when its machinery is installed, (g) five per cent of the contract price of each steamer when said steamer has passed successful trial, (h) the balance of the contract price of each steamer within thirty days (30) after delivery to and acceptance thereof by the Owner.

In computing the percentages thus to be paid of the purchase price of each steamer under subdivisions (b) to (g) inclusive, the purchase price shall be deemed to be the total purchase price minus the estimated cost of steel to be supplied by the Owner as above stated.

39 Provided that as to all the above installment payments, after said first payment described in (*a*) above no payment shall be deemed to be due at the time fixed unless the amount of said installment in addition to any theretofore paid and the proportion of the first payment is fairly *represented* in the progress of the work of construction on such steamer together with the value of materials assembled at the Contractor's yard and such fact is certified to by Owner's inspector.

It is understood that the Contractor in agreeing to the purchase price hereunder have estimated that the labor on each of said steamers will cost the Contractor $325,000 which is an increase of 25% over the recent cost of labor on a similar vessel, and that the engines, boilers (the boiler plates being figured at 6½c per lb.) and all fittings and auxiliaries, including everything entering into the construction of said steamers in addition to the shapes and plates (other than boiler plates) will cost the Contractor, delivered at the Contractor's plant, $466,000, so that the labor and all material other than shapes and plates are estimated to cost the Contractor in the aggregate $791,000.

Should the contractor be able to make any saving on the aggregate of these two items so that the cost is less than $791,000 for each of said vessels then the Owner shall have the benefit of said saving and the amount of said saving shall be deducted from the purchase price and allowance therefore shall be made in the last installment payment hereunder.

It is further understood that the last four steamers to be constructed hereunder shall be constructed on the same terms and for the same price as the first two steamers provided, however, that if any material required to be furnished by the Contractor entering into the construction of any of said last four steamers is advanced in price or if the labor necessary for the construction of any of said last four steamers costs more than the estimate cost of labor, as hereinbefore stated, then such additional cost in material and or labor shall be added to the purchase price of said steamer.

40 Before final acceptance by the Owner, the Owner may make, at Contractor's expense, a dock trial of not exceeding six hours, or a sea trial at some point convenient to Contractor's yard of not exceeding four hours, which shall be to the satisfaction of the Owner.

No inspector's certificate given or payment made under the terms of this contract, except on final payment, shall be conclusive evidence of the performance of this contract, either in whole or in part, and no payment shall be construed to be an acceptance of defective work or improper materials. Every facility shall be afforded by the Contractor to the inspectors appointed by the Owner. It shall be the duty of such inspectors, either personally or by deputies, to inspect all materials and workmanship entering into the construction, and to accept such materials and or workmanship as are in conformity with specifications, and promptly to reject all materials and all workmanship which do not comply with the specifications, such condemnation, if any, of materials to be made by

such inspectors before the same are worked or put into construction, if opportunity so to do is afforded by the Contractor. Said inspectors shall also have the right of rejection after material is worked or put into construction if facilities are not given for inspection prior thereto.

III The Owner shall have the right, but only by orders in writing, to substitute turbine engines for reciprocating engines, except in the first two steamers to be delivered, which shall have reciprocating engines, and to make such reasonable alterations, omissions, additions or substitutions not materially affecting the general design of the steamer as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect upon proper compensation or allowance being agreed therefor, as though such alterations, omissions, additions or substitutions were originally provided for in this contract. If by reason thereof, the cost of the construction hereunder shall be increased, then the sum to be paid by the Owner to the Contractor as herein provided shall be increased to an amount which shall be agreed upon. If the construction shall be rendered less expensive by reason thereof, the sum to be paid shall be decreased by an amount which shall be agreed upon. In case the parties are unable to agree as to the effect of such alterations, omissions, additions and substitutions or the price thereof, the dispute shall be determined as provided by Article VII hereof. If the contractor be delayed or obstructed in the transaction or completion of the work provided for by this contract by the delay, neglect or default of the Owner, or by reason of alterations or additions by the Owner, or the commandeering by the United States Government of materials on the ground or materials purchased by the Contractor but not delivered, or by reason of strikes, fire, lightning, earthquake, flood, riot, insurrection or war, or by reason of suspension of deliveries of material or machinery for any of the causes above stated, or by reason of instructions given by the Owner under Article XI hereof, beyond the time herein fixed, the time of delivery shall be extended for a period equivalent to the time lost by reason thereof. In the event that parties shall not agree as to such extension, such extension shall be determined in accordance with Article VII hereof.

IV The Contractor agrees to insure and keep insured at its own expense for the benefit of the Owner in insurance companies satisfactory to the Owner, said steamers and all materials and supplies for and to be used in construction under this contract, against any and all damage by fire and marine risks, lightning, settling of staging, breakage of waves, and risks of launching during such construction and until final completion and delivery, such insurance to be in the usual form and to cover the interest of the Owner for an amount not less than the amounts of the installments of payment, which, from time to time, have been made; provided, that the amount of insurance required shall not exceed at any time, the amount available in the insurance market.

V It is agreed that if the Contractor shall materially fail to

carry out the provisions of this contract and shall continue in default for a period of sixty days after notice thereof from the Owner, or its inspectors, or if the Contractor shall fail to make progress on the work satisfactory to the Owner, then the Owner shall have the power and right to enter into and take possession of said steamers and all materials and appliances in connection therewith, and in a reasonable and economical manner, for account of the Contractor, to complete the work called for in this contract at the yards of the Contractor or otherwise. After taking over the work in this manner, the Owner shall pay the Contractor on account of profit only a reasonable rent for the Contractor's yard and facilities used:

Provided, however, that if the Contractor can show to the satisfaction of the general manager of the Owner reasonable industry and good faith in the prosecution of the work hereunder, and that the delays have been caused by circumstances over which he had no control, the Contractor shall be allowed such opportunity as the general manager of the Owner may deem reasonable to complete the work within the time prescribed by this contract.

VI. It is agreed that as the payments, provided for herein, are made by the Owner on account of materials ordered by or assembled or set up in the yard of the Contractor or used in the
43 construction hereunder, the same to the extent of the payments made shall become the property of the Owner. This change of title, however, shall not be construed as a waiver by the Owner of its right to object if the terms of this contract have not been complied with, nor construed as acceptance of any work which fails to fulfill the requirements of this contract.

VII. In case the parties fail to agree as to any matter connected with this contract, or any doubt or dispute arises as to the meaning or effect of this contract or of the drawings and specifications which are a part hereof, or as to the manner of doing the work provided hereunder, or as to materials used or the time to be allowed or the amounts to be paid or allowed for alterations, omissions, additions, or substitutions, or as to any other particular, the matter shall be promptly referred to and determined by George W. Goethals, the general manager of the Owner, or his successor at the time in office, and his decision shall be final and binding upon the parties.

In case after delivery of a completed steamer to the owner under this contract (but only in that event), the Contractor shall deem that it is aggrieved by any decision of the general manager, as to any disputed matter hereunder of any kind, and shall give notice to the Owner to that effect within thirty days after delivery or after final payment by the Owner, such matter shall be determined by a board which shall consist of three naval architects or engineers or experts to be appointed, one by the Owner, one by the Contractor, and one by the American Bureau of Shipping. Such board shall, within thirty days after submission of such matter to it, determine what, if any, further sum shall be due by the Owner to the Contractor hereunder on account of such delivered steamer, and its finding (made by a majority of the board) shall be conclusive on both parties.

44 VIII. It is agreed by both parties that time is of the es
sence of this contract. The Contractor agrees to commence
and carry through to completion the work under this contract with
dispatch, and that it will not enter into any other contract or under
take any other work or service at its yards which will interfere in
any material manner with the completion of the word undertaken
hereunder.

IX. The contractor agrees to deliver the steamers to the Owner
free from any lien or incumbrance. In the event of the filing of any
lien or incumbrance against said steamers before final payment on
account of any person, firm, or corporation furnishing labor or ma
terials for said construction under this contract the owner may satisfy
the same out of any amount not paid to the Contractor hereunder, or
the Owner may, at its option, withhold the amount thereof from any
installment payment thereafter becoming due hereunder.

X. The Contractor agrees to protect the Owner from all claims
arising from accidents or casualties to employees or workmen on or
about the work covered by this contract, and indemnify the owner
against the same. The contractor shall be responsible for all claims,
if any, made against the owner for any infringements of patents or
patent rights and for the use of any patented articles and shall de
fend and save harmless and indemnify the owner against all such
claims, and from all costs, expenses, and damages which it may be
obliged to pay by reason of any such infringement of patents or
patent rights, or of the use of any patented articles, provided
45 that the Owner will, in all instances, notify the Contractor of
any claims made against it by reason of any such infringe
ment or use of patented articles, at the time when such claim is
made, and will promptly notify the Contractor of any suit or suits
brought against it therefor and give the Contractor an opportunity to
defend same, and provided that no payment shall be made by the
owner unless with the consent of the Contractor or pursuant to a
decree by a proper court in such litigation and provided that the con
tractor shall not be liable in the event the Owner specifically order
the use of the patent or patented article, whether or not the existence
of the patent be known to the parties hereto.

XI. Until and unless otherwise instructed by the Owner, the Con
tractor shall pay for all labor under this contract a scale of wages
equal to the scale of wages paid for the same service in the United
States naval shipyard nearest to the Contractor's yard, and the Con
tractor shall from time to time change such scale as the scale may be
changed by such naval shipyard. No strikes on the part of labor
employed by the Contractor under this contract and no lockout
against labor by the Contractor under this contract will be permitted.
All disputes involving the relation of the Contractor to labor em
ployed under this contract must be submitted for decision in writing
to the conciliation service of the United States Department of Labor.
Such submission in writing shall be by a committee of three selected
for the Contractor's yard in such manner as the Owner may direct.

The Contractor will comply with all instructions as to wages or
conditions of employment of labor on this contract given to it by

writing by the Owner. If by reason of any such instruction or increase of naval shipyard scale after this contract is executed, the cost of any steamer hereunder shall be increased, then the sums to
46 be paid by the Owner to the Contractor as herein provided for such steamer shall be increased by such amount. Such amount shall be agreed upon by the parties, and, if not agreed upon, shall be determined as provided in Article VII hereof.

XII. This contract may not be assigned by the Contractor without the consent of the Owner in writing, provided, however, that nothing in this contract shall be construed as prohibiting the assignment of payments due, or to become due, to the Contractor, for the purpose of obtaining credit for furthering the construction hereby undertaken, but the Owner may by writing make such prohibition.

XIII. Payments hereunder shall be made by the Owner by check addressed to the Contractor by mail at Smith Building, Seattle, Washington.

In witness whereof the parties hereto have caused this contract to be signed by their respective officers and their corporate seals to be hereunto affixed, duly attested, on the day above stated.

[SEAL.] UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION.
By WM. DENMAN,
President.

SKINNER & EDDY CORPORATION.
By LOUIS TITUS,
Atty. in Fact.

Attest:
[SEAL.] GERARD C. HENDERSON,
Secretary.

Attest:

47 SCHEDULE "A"

Partial Statement of Specifications.

This Schedule must be approved by Theodore E. Ferris.

The steamers shall be of the Robert Dollar type which shall be duplicates of the Hanna Nielsen, a vessel heretofore constructed by the Contractor except as hereinafter or in the drawings and specifications specifically stated.

(1) Dead weight capacity 8,800 tons.
(2) Length over all 423' 9".
(3) Length between perpendiculars, Lloyd's length 410' 5½".
(4) Beam, moulded 54' 0".
(5) Depth, moulded 29' 9".
(6) Draft loaded 24' 2".
(7) Deadweight capacity at 24' 2" draft, about 8,800 tons.
(8) Cubic capacity, grain, about 490,000 cubic feet.

(9) Calculated gross tonnage, about (American measurements) 5,730 tons.

(10) Calculated net tonnage, about (American measurements) 3,880 tons.

(11) Fresh water tanks capacity 200 tons.

(12) Coal bunker capacity (permanent) 420 tons.

(13) Coal bunker coal or cargo including permanent coal bunker capacity 1,230 tons.

(14) Speed on trial 11½ knots.

(15) Shaft horsepower 2,500.

(16) Steaming radius 10,000 miles.

NOTE.—All tons are taken at two thousand two hundred and forty pounds per ton.

(17) Steamers shall have reciprocating engines, forced draft and steam shall be supplied by three Scotch boilers 14' 9" diameter by 11' 2" long, fitted with superheat, and arranged for coal. Working pressure 190 lbs. per sq. in.

(18) Single screw, steel, cargo, tween deck steamship ready for service, including full equipment for going to sea as per specifications. Every care shall be taken to produce and use good materials and reliable workmanship throughout.

Approved
THEO. E. FERRIS

June 2/17

(SCHEDULE B.)

Prices of Steel, Pittsburgh Deliveries.

Plates 4½¢ per lb.
Shapes, flats and rods (for rivets) 3½¢ per lb.
Marine plates for boilers 6½¢ per lb.

48 RELATORS' EXHIBIT E-2.

Supplemental Agreement, Contract No. S. C. 10, Skinner & Eddy Corp.

This supplemental agreement, made this 16th day of February, 1918, by and between the Skinner & Eddy Corporation, a corporation organized under the laws of the state of Washington, party of the first part (herein called the Contractor), and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia, representing the United States of America, party of the second part (herein called the Owner), witnesseth that

Whereas, on May 28, 1917, the parties hereto entered into a certain contract for the construction by the Contractor of six (6) steel cargo-carrying steamers complete, copy of which contract is hereto attached, to be hereinafter mentioned as the original contract, and

Whereas, the Contractor has represented to the Owner and the Owner believes that the practice and detail incident to the plan of cost accounting necessitated by the terms of the original contract are delaying the construction of said vessels for the Owner, and the parties therefore desire that the terms and conditions of said original contract applying to the consideration to be paid by the Owner to the Contractor for the construction and delivery of said steamers be changed; and

Whereas, under the original contract certain quantities of steel have been furnished by the Owner to the Contractor for the construction of said steamers, the construction of four of said steamers is under way and certain part payments of the consideration under the terms of the original contract have already been made to the Contractor; and

Whereas since the execution of the original contract there have been issued from time to time by the Chief of Naval Operations of the Navy Department instructions for the fitting out of vessels for armed guard, which said instructions are fully set forth in the circular letter from the Chief of Naval Operations to various commandants and bureaus dated December 27, 1917, copy of which said letter is hereto attached and made a part hereof, said requirements in said letter (in order to correspond with reference made to them in another contract between the parties hereto) being hereinafter referred to as "military requirements," and including bulkheads, gun foundations, magazines, lookouts, additional lifeboats, life rafts and equipment therefor, changes in masts and rigging, as now designed, condensation oil and coal burning equipment, watertight frames, watertight doors, and other changes, accommodations, installations, equipment and structures of various kinds and descriptions; and

Whereas, part of said military requirements have, in accordance with instructions issued from time to time by the Owner, been heretofore installed in certain of the said steamers now under construction, and the Owner desires all of said requirements to be incorporated in said six steamers in so far as such incorporation can be affected without materially delaying their completion; and

Whereas the Contractor is ready and willing, in consideration of changes now to be made in the amount of the consideration for said six steamers, and the form and manner of its payment, as provided in the original contract, to enter into the undertakings hereinafter specified:

Now, therefore, in consideration of the premises and of the mutual undertakings of the parties hereto, it is agreed as follows:

I

1. The Contractor will furnish all labor and materials necessary for the construction of, and will fully construct and install, each and all of such military requirements, or parts thereof, in each and all of said six steamers, subject to the following exceptions and conditions, namely:

On account of the stage of construction of the first three said steamers reached on this date, those of such military requirements only will be constructed and or installed by the Contractor as may be specially required from time to time by the District Officer. As to the last three steamers under said original contract, all such military requirements will be constructed and or installed excepting such only as the District Officer shall expressly in writing direct the Contractor not to construct and or install. No labor or materials furnished in connection with such military requirements heretofore made under orders of the Owner, or which may hereafter be furnished by the Contractor, whether with or without such direction from the Owner, to comply with said military requirements or any of them, shall constitute extra work, alterations, additions or substitutions under Article III, Article VII or any other part of the original contract or of the within supplemental agreement, so as to be made, nor shall they in any other manner be made, the basis for compensation in addition to the lump sum consideration agreed upon herein. Where the terms of said letter of said Chief of Naval Operations are not deemed by the Owner to be a sufficient guide to the Contractor, the Owner will furnish to the Contractor plans and specifications covering such military requirements, otherwise the Contractor will construct and or install such requirements without such plans and or specifications of the Owner.

2. Any orders heretofore issued by the Owner for alterations, omissions, additions or substitutions and which may have increased, or which may increase, the cost of construction of said steamers or any of them, will not constitute a basis for additional compensation beyond the new consideration to be stated in Article II hereof.

3. The Contractor agrees to deliver said vessels complete with propelling machinery, auxiliaries and equipment with such military requirements as have already been furnished and installed, and as shall be called for under the provisions of this contract, to the Owner, afloat at the works of the Contractor at Seattle, as follows:

Hull 83—January 10th, 1918
Hull 84—February 4th, 1918
Hull 85—June 10th, 1918
Hull 86—July 4th, 1918
Hull 87—November 10th, 1918
Hull 88—December 4th, 1918

II

1. In consideration of the construction by the Contractor of said six steamers under the original contract, as amended by the within supplemental agreement, the Owner will pay the lump sum consideration of One Million Four Hundred and Seventy-five Thousand Dollars ($1,475,000) for each of the said six steamers.

2. Payments heretofore made by the owner under the original contract will be credited upon said revised consideration, subject to credits on account of steel furnished or to be furnished under Art

II of the original contract, and on account of such part payments as have already been made under the original contract, the purchase price is to be paid upon the basis of the following plan (interest being excluded in the accounting adjustments incident to the adoption of the plan of payments now provided):

(*a*) Ten per cent (10%) of the contract price of all of said steamers upon signing the original contract;

(*b*) Ten per cent (10%) of the contract price of each vessel when the keel thereof is laid;

(*c*) Five per cent (5%) of the contract price of each vessel when fifty per cent (50%) of the floors are in place;

52 (*d*) Five per cent (5%) of the contract price of each vessel when fifty per cent (50%) of the tank top is in place;

(*e*) Five per cent (5%) of the contract price of each vessel when one-half of the frames thereof are in place;

(*f*) Five per cent (5%) of the contract price of each vessel when all the frames thereof are in place and stem and stern posts are up;

(*g*) Ten per cent (10%) of the contract price of each vessel when one-half of the plating is bolted in place;

(*h*) Ten per cent (10%) of the contract price of each vessel when bulkheads and decks are in place;

(*i*) Ten per cent (10%) of the contract price of each vessel when said vessel is fully plated, and the decks and the outside of the vessel are entirely caulked;

(*j*) Ten per cent (10%) of the contract price of each vessel when said vessel is successfully launched;

(*k*) Ten per cent (10%) of the contract price of each vessel when steel houses are completed and machinery, boilers, auxiliaries and equipment are installed;

(*l*) The balance of the contract price of each vessel after completion and steam trial and on delivery to and acceptance by the Owner of such completed vessel.

It is further understood and agreed that if the cost of freight on materials necessary for the construction of these vessels is advanced over the present freight rate, that such additional cost of freight shall be added to the purchase price.

3. Before final acceptance of each vessel by the Owner, the Contractor shall make, at the Contractor's expense a dock trial covering test of main propelling machinery, boilers, auxiliaries and will run a trial trip or trips over a measured mile on Puget Sound and 53 the vessel without cargo but with fuel, ballast, or water tanks filled as may be required to sufficiently submerge the propeller, will make a speed of eleven and one-half (11½) miles over this measured course.

Inspector's Certificate.—4. No inspector's certificate given or payment made under the terms of this contract (except the final payment) shall be conclusive evidence of the performance of this contract, either in whole or in part, and no payment shall be construed to be an acceptance of defective work or improper materials. Every facility shall be afforded by the Contractor to the Inspectors ap-

pointed by the Owner. It shall be the right and duty of such inspectors, either personally or by deputies, to inspect all materials and workmanship entering into the construction and to accept such materials and or workmanship as are in conformity with specifications and promptly to reject all materials and or workmanship which do not comply with the specifications, such condemnation, if any, of materials to be made by such inspectors whenever defects are discovered prior to the final acceptance of the vessel by the Owner. Notice of rejection shall be in writing, signed by a designated representative of the Owner.

5. It is agreed that the wages paid by the Contractor shall not exceed those paid by the shipyards in the Seattle District for similar work. The Owner agrees that in the event that the wage schedule in the Seattle District should be increased by its written direction over the scale fixed by the Federal Adjustment Wage Board on November 3, 1917, together with the ten percent bonus thereon effective as of December 13, 1917, and becoming permanent on February 1, 1918, that such increase will be borne by the Owner, otherwise it will be borne by the Contractor.

The Contractor agrees that it will comply at all times with all instructions as to wages, hours or other conditions of labor issued by the Owner and applying to yards in the Seattle District.

If Sunday, holiday or overtime work be resorted to, it shall
54 be without additional cost to the Owner, unless specifically ordered by the Owner.

Inspectors and Auditors.—6. The Owner's inspectors or other duly authorized representatives shall have full and free access to the works of the contractor and to all work and material in connection with the construction of the vessels hereunder.

III

There are now deemed to be stricken from the original contract the following provisions thereof:

1. From Article I. The paragraph beginning with the words "The first two steamers" and concluding with the words "of the keels."

2. From Article II. The passage beginning in the second paragraph with the words "The balance of the purchase price" and concluding with the words "inspection prior thereto," at the end of said article.

3. All of Articles III, IV, V, VI, VII, VIII, IX, X, XI, XII and XIII of the original contract.

IV

Alterations.—1. The Owner shall have the right, but only by order in writing, to make such reasonable alterations, omissions, additions, or substitutions not materially affecting the general design of the vessel as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect upon proper con-

pensation or allowance being agreed therefor, as though such alterations, omissions, additions, or substitutions were originally provided for in this contract. If by reason of any such order issued after this date, the cost of the construction hereunder shall be increased, then the sum to be paid by the Owner to the Contractor as herein provided shall be increased to an amount which shall be agreed upon. If the construction shall be rendered less expensive by reason thereof, the sum to be paid be decreased by an amount which shall be agreed upon. In case the parties are unable to agree as to the effect of such alterations, omissions, additions and substitutions of the price thereof, the dispute shall be determined as provided by Article VII hereof.

Delay.—2. If the Contractor be delayed or obstructed in the transaction or completion of the work provided for by this contract by the delay, neglect or default of the Owner, or by reason of alterations or additions by the Owner, or the commandeering by the United States Government of materials on the ground or materials purchased by the Contractor but not delivered, or by reason of strikes, fires, lightning, earthquake, flood, riot, insurrection, or war, or by reason of suspension of deliveries of material or machinery for any of the causes above stated, or by delay or failure of Contractor to receive material or machinery for any cause beyond the contractor's reasonable control (it being understood, however, that in all subcontracts due care will be exercised in the selection of competent and reliable subcontractors, and all proper precaution taken to insure, so far as practicable, the faithful performance of any subcontract as may be made) or by reason of instructions given by the Owner under Article XI hereof, beyond the time herein fixed, the time of delivery shall be extended for a period equivalent to the time lost by reason thereof. Provided, that no request for extension of the contract time shall be considered unless the Contractor within twenty (20) days from the occurrence of an alleged cause of delay, shall notify the General Manager of the Owner, in writing, of the facts and circumstances in each case and of the extent to which the Contractor claims that the completion of the vessel is thereby delayed, and provided further that the Owner may, without prejudice to the rights of the Contractor, reserve his decision upon any and all claims for extension until the completion of the vessel, the work in the meantime not to be discontinued or delayed on account thereof. In the event that parties shall not agree as to such extension, such extension shall be determined in accordance with Article VII hereof.

Insurance.—3. The Contractor agrees to insure and keep insured at its own expense for the benefit of the Owner in insurance companies satisfactory to the Owner, or otherwise, said vessels and all materials and supplies for and to be used in construction under this contract against any and all damage by fire and marine risks, lightning, settling and staging, breakage of ways, and risks of launching during such construction and until final completion and delivery to and acceptance by the Owner, such insurance to be in the usual form and to be payable to the Owner and the Contractor as their

interests may appear, and for an amount not less than the amounts of the instalments of payment, which, from time to time have been made; Provided, that the amount of insurance required shall not exceed, at any time, the amount available in the insurance market, and that before placing the same the Owner has the option of waiving any insurance and reducing the contract price by an amount corresponding to the cost of said insurance.

V.

Forfeiture—The progress of the work must at all times be satisfactory to the Owner. Upon any failure or omission of the Contractor to make such satisfactory progress (unless caused by circumstances beyond its control), the Owner may declare this contract forfeited. In that event the Owner may immediately enter the shipyard and take possession of it and its facilities and of the vessels and materials and equipment. The owner shall thereupon cause to be taken and filed with the United States Shipping Board
57 a full and complete statement and inventory of all work done or begun on or about the vessels and of all materials on hand applicable thereto, the Owner may proceed with the completion of the vessels in accordance with this contract either at the shipyard with its equipment, and facilities, or elsewhere, by contract or otherwise, and in its discretion use for this purpose all suitable materials on hand and included in the inventory.

Provided, however, That if the Contractor can show to the satisfaction of the General Manager of the Owner reasonable industry and good faith in the prosecution of the work hereunder and that the delays have been caused by circumstances over which it had no control, the Contractor shall be allowed such opportunity as the General Manager of the Owner may deem reasonable to complete the work.

VI.

Title—It is agreed that title to all vessels, either completed or under construction, in so far as they shall have been inspected and approved by the Owner, shall be in the United States of America, and that the title for all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in the shipyard or used in the construction of the work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the replacement of unsatisfactory workmanship and or materials.

VII.

Disputes—In case the parties fail to agree as to any matter connected with this contract, or any doubt or dispute arises as to the

meaning or effect of this contract or of the drawings and specifications which are a part hereof, or as to the manner of doing
58 the work provided for hereunder, or as to materials used or the time to be allowed or the amounts to be paid or allowed for alterations, omissions, addition, or substitutions or as to any other particular, the matter shall be promptly referred to and determined by the General Manager of the Owner, or his successor at the time in office, and his decision shall be final and binding upon the parties.

In case after delivery of a completed vessel to the Owner under this contract (but only in that event), the Contractor shall deem that it is aggrieved by any decision of the General Manager, as to any disputed matter hereunder of any kind, and shall give notice in writing to the Owner to that effect within sixty days after delivery or after final payment by the Owner, such matter shall be determined by a board which shall consist of three naval architects or engineers, or experts to be appointed, one by the Owner, one by the Contractor, and the third arbitrator shall be selected by the two arbitrators first chosen, and if they cannot agree on such third arbitrator, then the latter shall be named by the Classification Society under which the vessels are being constructed. Such board shall, within thirty days after submission of such matter to it, make its determination and its findings (made by a majority of the board) shall be conclusive and binding on both parties.

VIII.

Time of Essence.—It is agreed by both parties that time is of the essence of this contract. The Contractor will commence and carry through to completion the work under this contract with all possible dispatch, will give precedence in its plant or plants to the work hereunder, subject only to the prior rights, if any, of a department of the United States of America, and will not enter into any other contract or undertake any work or service at its works which will
59 interfere in any material manner with the completion of the work undertaken hereunder.

Bonus and Liquidated Damages.—Should the Contractor succeed in delivering any of said vessels to the Owner complete before the dates above provided, the Owner agrees to pay, as premium for advanced delivery for each completed vessel so delivered, the sum of Three Hundred Dollars ($300.00) per day for each and every day gained by such advanced delivery. Should the Contractor fail to deliver any of said vessels on the dates herein fixed, the Contractor agrees to pay the Owner, as liquidated damages on each such vessel Three Hundred Dollars ($300.00) for each and every day of delay in delivery of such vessel; but it is hereby agreed that the total premium or liquidated damages so to be paid shall in no case exceed the sum of Twenty-five Thousand Dollars ($25,000) for any such vessel. Premiums or liquidated damages shall be added to or subtracted from the final payment hereunder.

IX.

Liens and Taxes—The Contractor agrees to deliver the vessel to the Owner free and clear of any lien or encumbrance. The Contractor further agrees upon the delivery of each vessel to deliver to the Owner all papers and documents necessary and or convenient to confer upon the Owner a full and unencumbered title to such vessels including classification certificates as herein provided together with a full release by the Contractor to the Owner waiving all further claims or demands of any nature, except any claim or demand in regard, and to the extent, to which the provisions of Article VII have been and or are invoked. When a payment is to be made hereunder, the Owner may require evidence satisfactory to it to be furnished showing what obligations for labor and materials, supplies, or equipment used or to be used in the construction of the vessels hereunder,
are unpaid, and the Owner may at its option, out of any
60 amount not paid to the Contractor hereunder withhold such amount as may be necessary to satisfy such obligations, or with the consent of the Contractor satisfy the same. In the event of the filing or attaching of any lien or encumbrance (whether valid or invalid) against the vessel before the final payment, the Owner may at its option out of any amounts not paid to the Contractor hereunder withhold such amount as may be necessary to satisfy such lien or encumbrance, or may satisfy or remove the same. The Owner will not exercise its option or satisfy or remove any lien or encumbrance if the Contractor desires to contest it, provided that the Contractor will immediately take such steps as in the judgment of the Owner will prevent such lien or encumbrance from delaying the construction or delivery of the vessels hereunder, and will indemnify and save the Owner harmless from any costs, charges, or damages incurred by reason of the contesting of such lien. It is hereby further stipulated and agreed by the Contractor for itself and on its own account and for and on account of all persons, firms, associations and corporations furnishing labor and materials for said vessels that this contract is upon the express condition that no lien or rights in rem, of any kind, shall be or attach upon or against any of the said vessels or their machinery, fittings, or equipment, or the materials therefor or any part thereof, or of either for or on account of any work done upon or about said vessels, machinery, fittings, equipment or materials, or of any materials furnished therefor or in connection therewith, nor for or on account of any other cause or thing or of any claim or demand of any kind, except the claims of the Owner.

The Contractor agrees to pay all taxes, if any, which may be assessed or assessable against the materials on hand and the vessels under construction up to the time said vessels shall be accepted by the
Owner. The Contractor further agrees to pay all income taxes,
61 excess profit taxes, and all other municipal, state or federal taxes which may be assessed or assessable on account of this contract.

X.

Claims and Patents.—The Contractor agrees to protect the Owner from all claims arising from accident or casualties to employees, workmen, or other persons, in, on or about the work covered by this contract, and to indemnify the Owner against the same.

The Contractor shall be responsible for all claims, if any, made against the Owner for all infringements of patents or patent rights and for the use of all patented articles, and shall defend and save harmless and indemnify the Owner against all such claims, and from all costs, expenses, and damages which it may be obliged to pay by reason of any such infringement of patents or patent rights, or of the use of patented articles, provided that the Owner will, in all instances, notify the Contractor of any claims made against it by reason of any such infringement or use of patented articles at the time when such claim is made, and will promptly notify the Contractor of any suit or suits brought against it therefor and give the Contractor an opportunity to defend the same, and provided that no payment shall be made by the Owner unless with the consent of the Contractor or pursuant to a decree by a proper court in such litigation. Where the Owner specifically orders the use of the patent or patented article, whether or not the existence of the patent is known to the parties hereto, the Owner will hold the Contractor harmless from any expense, loss, or damage arising from a claim of the infringement or use of such patent or patented article, provided that the Contractor notifies the Owner as soon as such a claim is made, and obeys the instructions of the Owner in connection therewith.

62 XI

Labor.—This contract is executed and delivered upon the understanding that, if desired by the United States Shipping Board Emergency Fleet Corporation, a provision, satisfactory in form and terms to the United States Shipping Board Emergency Fleet Corporation, restricting the hours of labor of laborers and mechanics employed by the Contractor or by sub-contractors and or providing for the payment of extra compensation for over-time work, will be inserted in the contract, with the same force and effect as if inserted in the contract before the execution and delivery thereof. If by reason of any such instruction the cost of any vessel hereunder shall be increased, then the sum to be paid by the Owner to the Contractor as herein provided shall be agreed upon by the parties, and if not agreed upon, shall be determined as provided in Article VII hereof.

XII

Not Assignable.—This contract may not be assigned by the Contractor without the consent of the Owner in writing, provided, however, that nothing in this contract shall be construed as prohibiting the assignment of payments due, or to become due, to the Contractor, for the purpose of obtaining credit for furthering the con-

struction hereby undertaken, but the Owner may by writing make such prohibition.

In order to effectuate the provisions of Article V hereof, the Contractor agrees that every contract made by it for the furnishing to it of parts, materials, supplies, machinery, and equipment, or the use thereof for the purpose of constructing the vessels agreed to be constructed hereunder, will in its terms be made assignable to the Owner.

XIII

Members of Congress Not to Benefit.—No member of or Delegate to Congress, nor Resident Commissioner, is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but this Article shall not apply to any contract within the operation or exception of Section 116 of the Act of Congress approved March 4, 1909 (35 Stats. 1109).

63

XIV.

Insolvency of Contractor.—Should the Contractor become insolvent, make an assignment or commit any act of bankruptcy, the Owner may and is hereby empowered forthwith to enter, take possession of and complete the work without giving any notice thereof to the Contractor.

XV.

Laborers' & Material Men's Bonds.—The Contractor agrees to procure and keep in force at its own expense, in some company or companies approved by the Owner, all such bond or bonds for the protection of claims and or liens of laborers and or material men, as may be required by the laws of the United States.

XVI.

Permits.—The Contractor agrees to comply with all laws, rules, regulations and requirements of the Departments of the United States affecting the construction of work, plants, and vessels, in or on navigable waters and the shores thereof, and all other waters subject to the control of the United States, and to procure at its own expense all permits from the United States, State, and local authorities which may be necessary to begin and carry on the work hereunder, and at all times to comply with all United States, State and local laws in any way affecting the work carried on under this contract.

64

XVII

Cancellation.—The progress of the work shall be at all times satisfactory to the Owner. Should the progress of the work not be satisfactory to the Owner then the Owner may, upon thirty (30) days' written notice to the Contractor, cancel this contract as to further performance thereof. Thereupon the Contractor shall complete only such vessels, or parts of vessels, as the Owner shall direct

in writing. The cancellation shall not affect the terms of the contract as to the vessels completed or directed to be completed.

The Contractor shall be reimbursed for losses sustained by such cancellation in computing such losses, there shall be included for each vessel under construction a proportionate part of the estimated profit on a completed vessel. Such proportionate part shall not exceed the percentage which the cost of the vessel under construction bears to the cost of a completed vessel. In computing profit or cost the average actual experience of the Contractor on vessels constructed for the Owner shall be taken as the basis of the computation.

In computing such losses the following shall not be included:

(*a*) profits on vessels not under construction;

(*b*) profits that the Contractor might have earned in other transactions.

If the parties cannot agree upon the amount of the loss, it shall be determined on the above basis and by arbitrators, one to be chosen by each party and the third by the two so chosen, and the decision of a majority of the arbitrators shall be conclusive and binding upon the parties hereto.

XVIII.

Checks.—Payments hereunder shall be made by the Owner by check addressed to the Contractor by mail at Seattle.

65 In witness whereof the parties hereto have caused this supplemental agreement to be signed by their respective officers and their corporate seals to be hereunto affixed, duly attested, on the day first above written.

[SEAL.] SKINNER & EDDY CORPORATION.
By LOUIS TITUS,
Atty. in Fact.

Attest:

Secretary.

[SEAL.] UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION.
By CHARLES PIETZ,
Vice-President.

Attest:
LESTER SISLER,
Secretary.

Countersigned:

Approved as to form—date 2/15/18.
I. R. W.
Legal Division.

66 RELATORS' EXHIBIT E-3.

Contract (Lump Sum Basis) for Complete Vessel.

Contract made this 15th day of January, 1918, between Skinner & Eddy Corporation, a corporation organized under the laws of the State of Washington, party of the first part (herein called the Contractor), and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia, (herein called the Owner) representing the United States of America, party of the second part.

For a valuable consideration, the receipt of which is hereby acknowledged by both parties, and in consideration of the mutual promises of the parties, it is agreed as follows:

I.

Work.

1. The Contractor hereby agrees to construct at its own risk and expense, in accordance with the Contractor's drawings and specifications (all drawings and specifications before binding on the Owner must bear the acceptance of and approval by the Owner, or its duly authorized representative), hereto attached and made a part of this contract under the rules and regulations of the American Bureau of Shipping and/or Lloyd's Register of Shipping, Fourteen (14) Steel vessels of the Bridge Poop and Forecastle Type, of approximately Eighty-eight hundred (8,800) Tons deadweight carrying capacity each and Eleven one-half (11½) knots speed light. The Contractor has the option of substituting reciprocating engines for turbines on three of said vessels.

67 2. The Contractor agrees to deliver said vessels complete with propelling machinery, auxiliaries and equipment with full military requirements to date, according to said drawings and specifications, to the Owner, afloat at the works of the Contractor at Seattle, Washington, as follows:

First vessel, June 15, 1918.
Second vessel, July 15, 1918.
Third vessel, August 15, 1918.
Fourth vessel, September 15, 1918.
Fifth vessel, November 15, 1918.
Sixth vessel, December 15, 1918.
Seventh vessel, January 15, 1919.
Eighth vessel, February 15, 1919.
Ninth vessel, March 15, 1919.
Tenth vessel, April 15, 1919.
Eleventh vessel, May 15, 1919.
Twelfth vessel, June 1, 1919.
Thirteenth vessel, June 15, 1919.
Fourteenth vessel, July 1, 1919.

II.

Payment.

1. In consideration of the performance of this agreement by the Contractor, the Owner agrees to pay therefor a lump sum purchase price of One Million Six Hundred and Seventy-two Thousand Dollars ($1,672,000.00), for each of such completed vessels. Such purchase price shall be paid in the following manner:

(*a*) Ten per cent (10%) of the contract price of all of said steamers ten (10) days after signing this contract.

(*b*) Ten per cent (10%) of the contract price of each vessel when the keel thereof is laid.

(*c*) Five per cent (5%) of the contract price of each vessel when fifty per cent (50%) of the floors are in place.

68 (*d*) Five per cent (5%) of the contract price of each vessel when fifty per cent (50%) of the tank top is in place.

(*e*) Five per cent (5%) of the contract price of each vessel when one-half of the frames thereof are in place.

(*f*) Five per cent (5%) of the contract price of each vessel when all of the frames thereof are in place and stem and stern posts are up.

(*g*) Ten per cent (10%) of the contract price of each vessel when one-half of the plating is bolted in place.

(*h*) Ten per cent (10%) of the contract price of each vessel when bulkheads and decks are in place.

(*i*) Ten per cent (10%) of the contract price of each vessel when said vessel is fully plated, and the decks and the outside of the vessel are entirely caulked.

(*j*) Ten per cent (10%) of the contract price of each vessel when said vessel is successfully launched.

(*k*) Ten per cent (10%) of the contract price of each vessel when steel houses are completed and machinery, boilers, auxiliaries and equipment are installed.

(*l*) The balance of the contract price of each vessel after completion and steam trial and on delivery to and acceptance by the Owner of such completed vessel.

It is further understood and agreed that if the cost of freight on materials necessary for the construction of these vessels is advanced over the present freight rate, that such additional cost of freight shall be added to the purchase price.

2. Before final acceptance of each vessel by the owner, the Contractor shall make, at the Contractor's expense a dock trial covering test of main propelling machinery, boilers, auxiliaries and will run a trial trip or trips over a measured mile on Puget Sound, and the vessel without cargo but with fuel, ballast, or water tanks filled as may be required to sufficiently submerge the propeller, will make a speed of Eleven and one-half (11½) knots over this measured course.

Inspector's Certificate.

69 3. No Inspector's certificate given or payment made un
the terms of this contract (except the final payment) sh
be conclusive evidence of the performance of this contract, either
whole or in part, and no payment shall be construed to be an acc
ance of defective work or improper materials. Every facility sh
be afforded by the Contractor to the inspectors appointed by
Owner. It shall be the right and duty of such inspectors, eit
personally or by deputies, to inspect all materials and workmans
entering into the construction and to accept such materials and
workmanship as are in conformity with specifications and prompt
to reject all materials and or workmanship which do not con
with the specifications, such condemnation, if any, of materials t
made by such inspectors whenever defects are discovered prior to
final acceptance of the vessel by the Owner. Notice of rejection s
be in writing, signed by a designated representative of the Owne

4. It is agreed that the wages paid by the Contractor shall not
ceed those paid by shipyards in Seattle District for similar w
The Owner agrees that in the event that the wage schedule in
Seattle District should be increased by its direction or consent
the scale fixed by the Federal Adjustment Wage Board on Novem
3, 1917, together with the ten per cent bonus thereon effective a
December 13, 1917, and becoming permanent on February 1, 1
that such increase will be borne by the Owner.

The Contractor agrees that it will comply at all times with
instructions as to wages, hours or other conditions of labor issue
the Owner and applying to yards in the Seattle District.

If Sunday, holiday or overtime work be resorted to, it s
be without additional cost to the Owner, unless specifically ord
by the Owner.

70 *Inspectors and Auditors.*

5. The Owner's inspectors or other duly authorized representa
shall have full and free access to the works of the Contractor
to all work and material in connection with the construction of
vessels hereunder.

III

Alterations.

1. The Owner shall have the right but only by order in writin
make such reasonable alterations, omissions, additions, or subs
tions not materially affecting the general design of the vessel a
Owner may deem necessary. The Contractor agrees to accept
and carry the same into effect upon proper compensation or al
ance being agreed therefor, as though such alterations, omiss
additions or substitutions were originally provided for in this
tract. If by reason thereof the cost of the construction hereu

shall be increased then the sum to be paid by the Owner to the Contractor as herein provided shall be increased to an amount which shall be agreed upon. If the construction shall be rendered less expensive by reason thereof, the sum to be paid shall be decreased by an amount which shall be agreed upon. In case the parties are unable to agree as to the effect of such alterations, omissions, additions and substitutions or the price thereof, the dispute shall be determined as provided by Article VII hereof.

Delay.

2 If the Contractor be delayed or obstructed in the transaction or completion of the work provided for by this contract by the delay, neglect or default of the Owner, or by reason of alterations or additions by the Owner, or the commandeering by the United
71 States Government of materials on the ground or materials purchased by the Contractor but not delivered, or by reason of strikes, fires, lightning, earthquakes, flood, riot, insurrection, or war, or by reason of suspension of deliveries of material or machinery for any of the causes above stated, or by delay or failure of Contractor to receive material or machinery for any cause beyond the Contractor's reasonable control (it being understood however, that in all sub-contracts due care will be exercised in the selection of competent and reliable sub-contractors, and all proper precautions taken to insure, so far as practicable, the faithful performance of any sub-contract as may be made), or by reason of instructions given by the Owner under Article XI hereof, beyond the time herein fixed, the time of delivery shall be extended for a period equivalent to the time lost by reason thereof. Provided, that no request for extension of the contract time shall be considered unless the Contractor, within twenty (20) days from the occurrence of an alleged cause of delay, shall notify the General Manager of the Owner, in writing, of the facts and circumstances in each case and of the extent to which the Contractor claims that the completion of the vessel is thereby delayed; and provided further that the Owner may, without prejudice to the rights of the Contractor, reserve his decision upon any and all claims for extension until the completion of the vessel, the work in the meantime not to be discontinued or delayed on account thereof. In the event that parties shall not agree as to such extension, such extension shall be determined in accordance with Article VII hereof.

IV.

Insurance.

The Contractor agrees to insure and keep insured at its own expense for the benefit of the Owner in insurance companies satisfactory to the Owner, or otherwise, said vessels and all materials and supplies for and to be used in construction under this
72 contract against any and all damage by fire and marine risks, lightning, settling of staging, breakage of ways, and

risks of launching during such construction and until final co
pletion and delivery to and acceptance by the Owner, such ins
ance to be in the usual form and to be payable to the Owner a
the Contractor as their interests may appear, and for an amou
not less than the amounts of the installments of payment, wh
from time to time have been made; provided, That the amou
of insurance required shall not exceed, at any time, the amou
available in the insurance market, and that before placing t
same the Owner has the option of waiving any insurance and
ducing the contract price by an amount corresponding to the c
of said insurance.

V.

Forfeiture.

The progress of the work must at all times be satisfactory to t
Owner. Upon any failure or omission of the Contractor to ma
such satisfactory progress (unless caused by circumstances beyo
its control), the Owner may declare this contract forfeited. I
that event the Owner may immediately enter the shipyard a
take possession of it and its facilities and of the vessels and ma
rials and equipment. The Owner shall thereupon cause to be tak
and filed with the United States Shipping Board a full and co
plete statement and inventory of all work done or begun on
about the vessels and of all materials on hand applicable there
the Owner may proceed with the completion of the vessels in acco
ance with this contract either at the shipyard with its equipme
and facilities, or elsewhere, by contract or otherwise, and in its d
cretion use for this purpose all suitable materials on hand and
cluded in the inventory.

Provided, however, That if the Contractor can show to the s
isfaction of the General Manager of the Owner reasonab
73 industry and good faith in the prosecution of the wo
hereunder and that the delays have been caused by circu
stances over which it had no control, the Contractor shall be allow
such opportunity as the General Manager of the Owner may dee
reasonable to complete the work.

VI.

Title.

It is agreed that title to all vessels, either completed or und
construction, in so far as they shall have been inspected and a
proved by the Owner, shall be in the United States of Ameri
and that the title for all material for the furtherance of work und
this contract, however and by whomsoever contracted for or ass
bled or set up in the shipyard or used in the construction of t
work under this contract, shall be in the Owner at all times. Not
ing contained herein, however, shall be construed as a waiver

the Owner of its right to direct the replacement of unsatisfactory workmanship and/or materials.

VII.

Disputes.

In case the parties fail to agree as to any matter connected with this contract, or any doubt or dispute arises as to the meaning or effect of this contract or of the drawings and specifications which are a part hereof, or as to the manner of doing the work provided for hereunder, or as to materials used or the time to be allowed or the amounts to be paid or allowed for alterations, omissions, additions, or substitutions, or as to any other particular, the matter shall be promptly referred to and determined by the General Manager of the Owner, or his successor at the time in office, and his decision shall be final and binding upon the parties.

74 In case after delivery of a completed vessel to the Owner under this contract (but only in that event), the Contractor shall deem that it is aggrieved by any decision of the General Manager, as to any disputed matter hereunder of any kind, and shall give notice in writing to the Owner to that effect within sixty days after delivery or after final payment by the Owner, such matter shall be determined by a board which shall consist of three naval architects or engineers, or experts to be appointed, one by the Owner, one by the Contractor, and the third arbitrator shall be selected by the two arbitrators first chosen, and if they cannot agree on such third arbitrator, then the latter shall be named by the Classification Society under which the vessels are being constructed. Such board, shall, within thirty days after submission of such matter to it, make its determination and its findings (made by a majority of the board) shall be conclusive and binding on both parties.

VIII.

Time of Essence.

It is agreed by both parties that time is of the essence of this contract. The Contractor will commence and carry through to completion the work under this contract with all possible dispatch, will give precedence in its plant or plants to the work hereunder, subject only to the prior rights, if any, of a department of the United States of America, and will not enter into any other contract or undertake any work or service at its works which will interfere in any material manner with the completion of the work undertaken hereunder.

Bonus and Liquidated Damages.

Should the contractor succeed in delivering any of said vessels to the Owner complete before the dates above provided, the Owner

agrees to pay, as premium for advanced delivery for ea
completed vessel so delivered, the sum of Three Hund
Dollars ($300) per day for each and every day gained
such advance delivery. Should the Contractor fail to deliver a
of said vessels on the dates herein fixed, the Contractor agrees
pay the owner, as liquidated damages on each such vessel th
Hundred Dollars ($300.00) for each and every day of delay
delivery of such vessel; but it is hereby agreed that the total p
mium or liquidated damages so to be paid shall in no case exc
the sum of Twenty-five thousand Dollars ($25,000), for any s
vessel. Premiums or liquidated damages shall be added to or s
tracted from the final payment hereunder.

IX

Liens and Taxes

The contractor agrees to deliver the vessels to the owner free
clear of any lien or encumbrance. The contractor further agr
upon the delivery of each vessel to deliver to the Owner all pap
and documents necessary and or convenient to confer upon
Owner a full and unencumbered title to such vessels including cl
fication certificates as herein provided together with a full rel
by the Contractor to the Owner waiving all further claims or
mands of any nature, except any claim or demand in regard, and
the extent to which the provisions of Article VII have been and
are invoked. When a payment is to be made hereunder, the Ow
may require evidence satisfactory to it to be furnished showing w
obligations for labor and materials, supplies, or equipment use
to be used in the construction of the vessels hereunder, are unp
and the Owner may at its option, out of any amount not paid to
Contractor hereunder withhold such amount as may be neces
to satisfy such obligations, or with the consent of the Contra
satisfy the same. In the event of the filing or attaching of
lien or encumbrance (whether valid or invalid) against
vessel before the final payment, the owner may at its op
out of any amount not paid to the Contractor hereunder w
hold such amount as may be necessary to satisfy such lien or
cumbrance, or may satisfy or remove the same. The Owner will
exercise its option to satisfy or remove any lien or encumbran
the Contractor desires to contest it, provided that the Contractor
immediately take such steps as in the judgment of the Owner
prevent such lien or encumbrance from delaying the construction
delivery of the vessels hereunder, and will indemnify and save
Owner harmless from any costs, charges, or damages incurred
reason of the contesting of such lien. It is hereby further stipul
and agreed by the Contractor for itself and on its own account
for and on account of all persons, firms, associations and corporat
furnishing labor and materials for said vessels that this contra
upon the express condition that no lien or rights in rem of any k
shall lie or attach upon or against any of said vessels or their mac

ery, fittings or equipment, or the materials thereof or any part thereof, or of either for or on account of any work done upon or about said vessels machinery, fittings, equipment or materials, or of any materials furnished therefor or in connection therewith, nor for or on account of any other cause or thing or of any claim or demand of any kind, except the claims of the Owner.

The Contractor agrees to pay all taxes, if any, which may be assessed or assessable against the materials on hand and the vessels under construction up to the time said vessel shall be accepted by the Owner. The Contractor further agrees to pay all income taxes, excess profit taxes, and all other municipal, state or federal taxes which may be assessed or assessable on account of this contract.

77

X.

Claims and Patents.

The Contractor agrees to protect the Owner from all claims arising from accidents or casualties to employees, workmen, or other persons, in on or about the work covered by this contract, and to indemnify the Owner against the same.

The Contractor shall be responsible for all claims, if any, made against the Owner for all infringements of patents or patent rights and for the use of all patented articles, and shall defend and save harmless and indemnify the Owner against all such claims, and from all costs, expenses, and damages which it may be obliged to pay by reason of any such infringement of patents or patent rights or of the use of patented articles, provided that the Owner will, in all instances, notify the Contractor of any claims made against it by reason of any such infringement or use of patented articles at the time when such claim is made, and will promptly notify the Contractor of any suit or suits brought against it therefor and give the Contractor an opportunity to defend the same, and provided that no payment shall be made by the Owner unless with the consent of the Contractor or pursuant to a decree by a proper court in such litigation. Where the Owner specifically orders the use of the patent or patented articles, whether or not the existence of the patent is known to the parties hereto, the Owner will hold the Contractor harmless from any expense, loss, or damage arising from a claim of the infringement or use of such patent or patented article, provided that the Contractor notifies the Owner as soon as such a claim is made, and obeys the instruction of the Owner in connection therewith.

XI.

Labor.

This contract is executed and delivered upon the understanding that, if desired by the United States Shipping Board Emer-
78 gency Fleet Corporation, a provision, satisfactory in form and terms to the United States Shipping Board Emergency

Fleet Corporation, restricting the hours of labor of laborers and mechanics employed by the Contractor or by sub-contractors and or providing for the payment of extra compensation for overtime work, will be inserted in the contract, with the same force and effect as if inserted in the contract before the execution and delivery thereof. If by reason of any such instruction the cost of any vessel hereunder shall be increased, then the sum to be paid by the Owner to the Contractor as herein provided shall be agreed upon by the parties, and if not agreed upon shall be determined as provided in Article VII hereof.

XII.

Not Assignable.

This contract may not be assigned by the Contractor without the consent of the Owner in writing, provided, however, that nothing in this contract shall be construed as prohibiting the assignment of payments due, or to become due, to the Contractor, for the purpose of obtaining credit for furthering the construction hereby undertaken, but the Owner may by writing make such prohibition.

In order to effectuate the provisions of article V hereof, the Contractor agrees that every contract made by it for the furnishing to it of parts, materials, supplies, machinery, and equipment, or the use thereof, for the purpose of constructing the vessels agreed to be constructed hereunder, will in its terms be made assignable to the Owner.

XIII.

Members of Congress Not to Benefit.

No member of or Delegate to Congress, nor Resident Commissioner, is or shall be admitted to any share or part of this
79 contract, or to any benefit that may arise therefrom; but this article shall not apply to any contract within the operation or exception of Section 116 of the Act of Congress approved March 4, 1909 (35 Stats., 1109).

XIV.

Insolvency of Contractor.

Should the Contractor become insolvent, make an assignment or commit any act of bankruptcy, the Owner may and is hereby empowered forthwith to enter, take possession of and complete the work without giving any notice thereof to the Contractor.

XV.

Laborers' & Material Men's Bonds.

The Contractor agrees to procure and keep in force at its own expense, in some company or companies approved by the Owner, all

such bond or bonds for the protection of claims and/or liens of laborers and or material men, as may be required by the laws of the United States.

XVI.

Permits.

The Contractor agrees to comply with all laws, rules, regulations and requirements of the Departments of the United States affecting the construction work, plants, and vessels, in or on navigable waters and the shores thereof, and all other waters subject to the control of the United States, and to procure at its own expense all permits from the United States, State and local authorities which may be necessary to begin and carry on the work hereunder, and at all times to comply with all United States, State and local laws in any way affecting the work carried on under this contract.

80 XVII.

Cancellation.

The progress of the work shall be at all times satisfactory to the Owner. Should the progress of the work not be satisfactory to the Owner then the Owner may, upon thirty (30) days' written notice to the Contractor, cancel this contract as to further performance thereof. Thereupon the Contractor shall complete only such vessels, or parts of vessels, as the Owner shall direct in writing. The cancellation shall not affect the terms of the contract as to the vessels completed or directed to be completed.

The Contractor shall be reimbursed for losses sustained by such cancellations. In computing such losses, there shall be included for each vessel under construction a proportionate part of the estimated profit on a completed vessel. Such proportionate part shall not exceed the percentage which the cost of the vessel under construction bears to the cost of a completed vessel. In computing profit or cost the average actual experience of the Contractor on vessels constructed for the Owner shall be taken as the basis of the computation. In computing such losses the following shall not be included

(*a*) profits on vessels not under construction;

(*b*) profits that the Contractor might have earned in other transactions.

If the parties cannot agree upon the amount of the loss, it shall be determined on the above basis and by arbitrators, one to be chosen by each party and the third by the two so chosen, and the decision of a majority of the arbitrators shall be conclusive and binding upon the parties hereto.

81 XVIII.

Checks.

Payments hereunder shall be made by the Owner by check addressed to the Contractor by mail, at Seattle, Washington.

In witness whereof the parties hereto have caused this contract to be signed by their respective officers and their corporate seals to be hereunto affixed, duly attested, on the day above stated.

SKINNER & EDDY CORPORATION,
[SEAL.] By LOUIS TITUS,
Atty. in Fact.

Attest:
L. B. STEDMAN,
Secretary.

SKINNER & EDDY CORPORATION,
By D. E. SKINNER,
President.

Countersigned:
JAMES G. EDDY.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,
[SEAL.] By CHARLES PIEZ,
Vice-President.

Attest:
LESTER SISLER,
Secretary.

Approved as to form.
Date 1/15/18.
C. M. W., JR.,
Legal Division.

82 United States Shipping Board Emergency Fleet Corporation.

Washington,
May 17, 1918.

Louis Titus, Esq.,
Attorney in Fact Skinner & Eddy Corp.,
Westory Building,
Washington, D. C.

DEAR SIR:

Contract #175 S. C.—Amendment of Paragraph Two of Article 111.

Referring to your letter of May 15th, 1918,

It is agreeable to this Corporation and it hereby agrees that the contract with Skinner & Eddy Corporation, dated January 15th, 1918, providing for the construction of fourteen (14) 8800-ton vessels, which contract is designated as contract #175 S. C., is amended in the second paragraph of Article 111 by the insertion after the language "or by reason of instructions given by the Owner under Article XI hereof" of the following words: "or any other cause beyond the reasonable control of the contractor."

You are requested to evidence your acceptance of this amendment upon the copy of this letter enclosed herewith.

Yours very truly,

(Signed) HOWARD COONLEY,
Vice-President.

(Accepted
SKINNER & EDDY CORPORATION,
By LOUIS TITUS,
Atty. in Fact.)

83 RELATOR'S EXHIBIT E-4.

Agreement to Contract No. 175 S. C.

Skinner & Eddy Corporation.

Washington, D. C.

This supplemental agreement executed the 16th day of February, 1918, amending contract between the parties hereto entered into on January 15th, 1918, for fourteen (14) steel vessels;

Witnesseth:

The Contractor desires certain important changes to be made in its contract Number 10 executed between the parties on May 28th, 1917, and the Owner is unwilling to consent to such changes unless the amendment herein provided for can be made.

In consideration of the premises and of the mutual undertakings of the parties, it is agreed that the second paragraph of Section 3 of Article II of said January 15th contract, to be found on the 4th page thereof, shall be amended as follows: In the fifth line of said paragraph, the word "written" shall be inserted before the word "direction," while the words "or consent" shall be stricken out; and, in the ninth line thereof, there shall be a comma after the word "Owner," followed by the words "otherwise it will be borne by the Contractor."

This supplemental agreement is executed on behalf of the Contractor by Louis Titus, its attorney in fact, under power of attorney, copy of which is attached hereto, the original being in the Owner's possession.

SKINNER & EDDY CORPORATION,
[SEAL] By LOUIS TITUS,
Atty. in Fact.

Witness:

UNITED STATES SHIPPING BOARD
EMERGENCY FLEET CORPORATION,
[SEAL] By CHARLES PIEZ,
Vice-President.

Attest:

LESTER SISLER,
Secretary.

Approved as to form.

Date: 2/15/18.

I. B. W.,
Legal Division.

84 RELATOR'S EXHIBIT E-5.

May 11th, 1918.

Skinner & Eddy Corporation,
Seattle, Washington.

GENTLEMEN:

On August 3rd, 1917, we requisitioned eight ships under construction in your yard. All of these have been delivered.

We have since placed a contract with you, known as Contract #10, and on this contract two ships remain to be delivered. We have likewise placed with you Contract #175 for fourteen ships, of which you have delivered one.

We have made an arrangement with the Seattle Construction & Drydock Co., fully set forth in letter dated May 10, 1918, a copy of which is hereto annexed, by the terms of which we are to acquire their real estate, plant, equipment and machinery at Seattle, and have made certain other arrangements more fully set forth in that letter.

We are desirous of leasing this yard to your Company and of making an agreement with you to sell the yard to you upon the termination of the lease. We are likewise desirous of placing additional contracts with your Company for ships to be constructed at your present yard and a still further contract for ships to be constructed at the Seattle Construction & Drydock Company yard.

We now make you the following proposition:

(1) We will ascertain within the next 90 days the exact amount of money which it will be necessary to pay to the Seattle Construction & Drydock Company and others in accordance with the letter hereunto annexed, and will state this sum to you. We shall enter into a lease with you based on the sum so ascertained which will provide for the use of the entire yard by you and the payment as a rental by you to us of $125,000 per ship for the first 30 ships
85 delivered under the new contract to which reference is hereafter made. At the time of completion of the 30th ship we will sell to you and you will buy all of the property and you will pay therefor to us in cash all sums which we have paid in accordance with the letter annexed hereto, plus interest and other charges which we shall have to pay on the mortgages on the Seattle Construction &

Drydock Company plant, less the amount of rental paid by you to us at that date. We shall charge to this account interest on the full amount of your outlay, including the mortgages, at the rate of 5½% per annum, but of this interest we shall pay the interest charges on the mortgages. We shall, from time to time, pay off on account of their principal sums, to the end that these mortgages may be satisfied as promptly as possible, and you will ultimately receive the plant and equipment free and clear of all encumbrances. If such payment involves the payment of a premium, you will pay the premium. We shall also credit you with interest on each installment of rental paid by you at the rate of five per cent per annum from the date of the payment of such installment of rental. The amount thus ascertained shall be paid by you to us as the full purchase price of the property and upon receipt thereof we shall deed you said property free of all mortgages or liens except such as may be created by you.

(2) There are at the present time on the ways at the plant four Hulls Nos. 108, 109, 110 and 111 partially completed. These are under direct contract with us on a basis of $175 per deadweight ton. We shall adjust with the Seattle Construction & Drydock Company for work done up to the present time, and shall pay to your Company the same proportion of the contract price as is represented by the state of incompletion of the ships. The percentage of completion of the ships shall be determined by our District Officer, Captain John F. Blain.

(3) We shall alter the provisions of Contract No. 175 so as to pay you an *additional* $50,000 per ship on each ship delivered 90 days ahead of the contract date, and provided you anticipate all the delivery dates provided for in that contract by an average of 90 days then you shall receive such additional bonus on all fourteen of said ships, but this is upon the express condition that there shall be no claims for overtime or overhead based on overtime in connection with these ships.

(4) We shall award you the contract for fifteen ships to be completed at your present plant on the basis of $190 a ton, with the usual protection on labor and freight and with a provision for payment of $50,000 extra bonus if you meet the delivery dates named in the contract which is in the course of preparation.

(5) We shall award you an additional contract for 35 ships for construction at the Seattle Construction & Drydock Company yard on the same basis as the contract referred to in the last preceding paragraph, but with the further provision that you guarantee the delivery of 35,000 tons per way per year, the year to commence on October 1st, 1918. In the event that you fail to deliver 175,000 tons before October 1st, 1919, you are to forfeit all bonuses and $25,000 per ship for each ship not delivered.

(6) There will be no readjustment for losses or shortage in profits on the ships requisitioned on August 3rd, 1917.

(7) No overtime or overhead based on overtime shall be paid on any of your ships.

(8) You are to execute a more formal agreement if we consider such necessary.

Very truly yours,
(Signed) HOWARD COONLEY,
Vice-President.

87 Approved
CHESTER W. CUTHELL, (Signed),
General Counsel.

Accepted
SKINNER & EDDY CORPORATION,
By LOUIS TITUS, (Signed),
Attorney in Fact.

May 10th, 1918.

Seattle Constr. & Drydock Co.,
Seattle, Washington.

GENTLEMEN:

On August 3rd, 1917, we requisitioned while under construction in your yard Hulls Nos. 91 to 99, both inclusive, 101, 102 and 103. Of these Hulls Nos. 92, 93 and 94 have been delivered and No. 91 has been launched.

We subsequently placed with you a contract for the construction of ten completed ships (Contract #15), Hulls Nos. 104, 105 and 108 to 115, both inclusive. Of these Nos. 108 to 111, both inclusive, are now on the ways at Seattle.

Hulls Nos. 95, 97, 98, 99, 101, 102 and 103 are being constructed at Todd Drydock & Construction Company at Tacoma.

We desire to acquire certain of your assets, and we now make you the following proposition:

(1) We will purchase from you all of your real estate, plant, equipment and machinery at Seattle (with the exception of the drydocks) for the total sum of $3,874,313, of which sum we are to pay you $1,374,313 in cash at the time of the delivery of the documents, and the balance by accepting the property subject to the existing mortgages totaling $2,500,000, of which $1,500,-
88 000 bears interest at the rate of 4½% per annum and matures in 1926, and the other $1,000,000 bears interest at the rate of 6% per annum and matures in 1922. We, or our nominee, will assume these mortgages if after an examination of the provisions of the mortgages or deeds of trust we are convinced that a foreclosure would follow if we did not assume them. We shall likewise take such steps as may be necessary to relieve your other assets from the liens of these mortgages, and will hold you harmless from the possibility of a deficiency judgment. The purchase price is based on your balance sheet as of January 31. We shall pay in addition to said sum, the cost of additions to the plant and equipment from January 31st to May 31st, 1918, minus depreciation for the same period.

(2) We are to select sufficient material now on your premises to complete Hulls Nos. 108, 109, 110 and 111; and are to pay you the actual cost thereof to your Company, including freight and cartage, less what has already been paid for by us or the former owner.

(3) You are to remove the two drydocks, and we are to pay the tonnage expense to any point in Seattle or Tacoma.

(4) We are to select five-twelfths of all stock and supplies, and to pay you actual cost to your Company for the same.

(5) The other seven-twelfths of said stock and supplies and remaining hull materials you are to remove from the premises with all reasonable speed, and we are to pay the actual expenses of moving the same to the plant of the Todd Drydock & Construction Company.

(6) Hulls Nos. 104, 105, 112, 113, 114 and 115 are to be built at the Todd Drydock & Construction Company plant, in accordance with our existing contract with your Company, and we are to order promptly four additional ships under the same contract and at the same terms.

(7) We are to pay to your Company for the requisitioned ships, as above stated, actual cost, in accordance with the definition hereunto annexed, plus $10.00 per deadweight ton. Although some of these ships are under construction at the Tacoma plant, there is to be no inter-company profit charged. You are to credit to us all sums which you have heretofore received either from the former owners or from ourselves. You are to remove Hull No. 95 and finish the same at the Tacoma plant.

(8) As to Nos. 108, 109, 110 and 111, you are to state the amounts of the costs up to the date of the transfer, and will credit all progress payments which you have received, either from the former owners or from ourselves and proper distributed amounts from the payments received by you through the impressed fund. We are to pay you any balance if you have been underpaid and you are to refund to us proper sums if you have been overpaid.

(9) You are to remove at our expense the materials and special equipment for Nos. 106, 106 and 107, being scout cruisers under construction for the Navy, to the Tacoma plant. You are to pay for this special equipment at cost.

(10) We are to cause to be constructed boilers and engines for seven commandeered ships, Hull Nos. 96 to 99, inclusive, 101, 102 and 103, and the six contract ships, Hulls Nos. 104, 105, 112, 113, 114 and 115 at a reasonable lump sum price to be hereafter determined by Captain John F. Blair.

(11) We are not deducting any depreciation from your property figures, and for that reason we shall not allow any depreciation as an item of cost in the arrangement covering the requisitioned ships.

(12) You are to remove the drydocks as soon as possible, but in no event later than September 1st, 1918. During the period that it remains on the property above described, you are to pay to us or to our nominee as rental one-quarter of

all of the dockage charges. The other three-quarters, whether collected by us or by yourselves, is to be paid or retained by you. To insure the proper operation of the dock, your Company is to have the privilege of naming the men who are actually to operate it, and you are to pay their wages. The prevailing rates of dockage charges are to be charged, and all of the repair profits are to be made by us or our nominee.

(13) The transfer shall take effect as of the close of business on May 31st, 1918.

(14) You are to supply us promptly with the necessary information for search of title of the property and bring your books, records and financial statements up to date.

(15) If not completed before May 31st, you are to remove the "Nankin" (ex "Congress") and the destroyer (together with all special equipment and material therefor) which you are constructing for the Navy from the plant at Seattle and finish them somewhere else, subject to the consent of the Navy as to the destroyer. If such consent is not obtained, then arrangements for the use of the plant and equipment are to be made with us or our nominee on reasonable terms to be determined by Captain John F. Blain.

(16) You are to execute a more formal agreement if such is considered necessary by us.

(17) It is our intention in making this transaction to expedite the construction of ships, and we anticipate that there may be certain minor matters which will have to be adjusted.

With your approval, we shall name Captain John F. Blain, District Officer, to determine all questions of differences between
91 you and the prospective purchaser of the property or between you and us.

Very truly yours,

(Signed) HOWARD COONLEY,
Vice-President.

Approved
CHESTER W. CUTHELL,
General Counsel.

Accepted
SEATTLE CONSTRUCTION & DRY DOCK CO.
By TODD SHIPYARDS CORPORATION,
(Signed) By GEORGE PALMER,
Vice-President.

C. W. C. J. H. W.

RELATOR'S EXHIBIT E-6.

Contract 309 (Lump Sum Basis) for Complete Vessel—Steel Furnished.

Contract made this 27th day of May, 1918, between Skinner & Eddy Corporation, a corporation organized under the laws of the State of Washington, party of the first part (herein called the Cor

tractor), and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia (herein called the Owner), representing the United States of America, party of the second part.

For a valuable consideration, the receipt of which is hereby acknowledged by both parties, and in consideration of the mutual promises of the parties it is agreed as follows:

92 I.

Shipbuilding Plant.

1. The Contractor agrees to maintain upon a suitable site at Seattle, Washington, (which site shall provide ample depth of water for launching the vessels herein contracted for and for navigating said vessels to the high seas) a complete shipbuilding plant, including office buildings, shops, building slips, plant equipment and appurtenances, including proper fire protection, adequate to assure the construction, completion and delivery of the vessels under the terms and at the times hereinafter provided for.

Work.

2. The Contractor hereby agrees to construct at its own risk and expense, in accordance with the Contractor's drawings and specifications, (all drawings and specifications, before binding on the Owner, must bear the acceptance of and approval by the Owner, or its duly authorized representative) hereto attached and made a part of this contract, under the rules and regulations of the American Bureau of Shipping fifteen (15) steam, steel vessels of 9,600 tons dead weight carrying capacity each, and eleven and one-half knots speed at light draft. Said vessels to be similar to those now being constructed under the contract of Jan. 15th, 1918, designated as Contract No. 175 S. C., except that they shall have shelter decks and be constructed to burn both coal and oil.

Deliveries.

The Contractor agrees to deliver said vessels complete with propelling machinery, auxiliaries and equipment, with full military requirements, according to said drawings and specifications
93 to the Owner, afloat at the works of the Contractor at Seattle, Washington, as follows:

First	vessel	on	or	before	Jan.	31st, 1919.
Second	"	"	"	"	Feb.	15th, 1919.
Third	"	"	"	"	March	3rd, 1919.
Fourth	"	"	"	"	"	18th, 1919.
Fifth	"	"	"	"	April	2nd, 1919.
Sixth	"	"	"	"	May	2nd, 1919.
Seventh	"	"	"	"	"	17th, 1919.
Eighth	"	"	"	"	June	1st, 1919.
Ninth	"	"	"	"	"	16th, 1919.
Tenth	"	"	"	"	July	1st, 1919.
Eleventh	"	"	"	"	Aug.	1st, 1919.
Twelfth	"	"	"	"	"	16th, 1919.
Thirteenth	"	"	"	"	Sept	1st, 1919.
Fourteenth	"	"	"	"	"	16th, 1919.
Fifteenth	"	"	"	"	Oct	1st, 1919.

II.

Payment.

1. In consideration of the performance of this Agreement by the Contractor, the Owner agrees to pay therefor a lump sum purchase price of One Million Eight Hundred Forty-five Thousand Dollars ($1,845,000.00) for each of such completed vessels. Such purchase price shall be paid in the following manner:

(a) Ten per cent (10%) of the contract price of all said steamers within thirty (30) days after signing this contract.

(b) Ten per cent (10%) of the contract price of each vessel when the keel thereof is laid.

(c) Five per cent (5%) of the contract price of each vessel when fifty per cent (50%) of the floors are in place.

94 (d) Five per cent (5%) of the contract price of each vessel when fifty per cent (50%) of the tank top is in place.

(e) Five per cent (5%) of the contract price of each vessel when one-half of the frames thereof are in place.

(f) Five per cent (5%) of the contract price of each vessel when all the frames thereof are in place, and stem and stern posts are up.

(g) Ten per cent (10%) of the contract price of each vessel when one-half of the plating is bolted in place.

(h) Ten per cent (10%) of the contract price of each vessel when bulkheads and decks are in place.

(i) Ten per cent (10%) of the contract price of each vessel when said vessel is fully plated, and the decks and the outside of the vessel are entirely caulked.

(j) Ten per cent (10%) of the contract price of each vessel when said vessel is successfully launched.

(k) Ten per cent (10%) of the contract price of each vessel when steel houses are completed and machinery, boilers, auxiliaries and equipment are installed.

(l) The balance of the contract price of each vessel after comple-

tion and steam trial and on delivery to and acceptance by the Owner of such completed vessel.

Trial.

2. Before final acceptance of each vessel by the Owner, the Contractor shall make, at the Contractor's expense, a dock trial covering test of main propelling machinery, boilers, auxiliaries and will run a trial trip or trips over a measured mile on Puget Sound, and the vessel without cargo but with fuel, ballast, or water tanks filled as may be required to sufficiently submerge its propeller, will make a speed of eleven and one half ($11\frac{1}{2}$) knots over this measured course.

95 *Acceptance.*

3. If no defects develop during the aforesaid trial and provided that the vessel has been completed in accordance with the plans and specifications and is otherwise satisfactory, the vessel shall be taken over and accepted by the Owner.

Correct Defects.

4. If at any time within six months after the aforesaid acceptance of any of the said vessels any defects in the material or workmanship, other than such as are due to fair wear and tear or misuse, shall appear, same shall be corrected and repaired, to the satisfaction of the Director General of the Owner, at a port in this country and at the Contractor's expense, provided that the liability of the builder in this respect shall not extend beyond the actual replacement or remedy of such defective parts, and provided, further, that if the vessel cannot be conveniently repaired at a port in this country, the builder's liability shall be limited to a sum equivalent to the cost of supplying the material and doing the work in question at a port in the United States. Upon acceptance of each vessel, the Contractor shall furnish a bond in form satisfactory to the Owner, and with a surety or sureties thereon acceptable to the Owner, which bond shall be in the penal sum of Twenty Five Thousand Dollars ($25,000.00), and shall be conditional upon the full and faithful performance by the Contractor of the terms of this paragraph 4 of Article II.

Inspector's Certificate.

5. No inspector's certificate given or payment made under the terms of this contract (except the final payment) shall be conclusive evidence of the performance of this contract, either in whole
96 or in part, and no payment shall be construed to be an acceptance of defective work or improper materials. Every facility shall be afforded by the Contractor to the inspectors appointed by the Owner. It shall be the right and duty of such inspectors, either personally or by deputies, to inspect all materials and workmanship entering into the construction, and to accept such materials and/or

or workmanship as are in conformity with specifications and promptly to reject all materials and or or workmanship which do not comply with the specifications; such condemnation, if any, of materials to be made by such inspectors whenever defects are discovered prior to the final acceptance of the vessel by the Owner. Notice of rejection shall be in writing, signed by a designated representative of the Owner.

Wages to be Paid.

6. It is agreed that the wages paid shall be those fixed by the Shipbuilding Wage Adjustment Board for the Seattle District effective February 1st, 1918. In the event said Adjustment Board shall make any increase in the scale of wages, the net increase in labor cost for the vessels shall be borne by the Owner; in the event of any decrease the Owner shall receive the sole benefit thereof. If Sunday, holiday night work or overtime work be resorted to, it shall be without additional expense to the Owner unless specifically authorized by the Owner in advance.

Protections for Increased Freight Rates.

7. The Owner agrees to pay the increase in freight rates over those in force as of the date of this agreement, upon all material machinery, and equipment used in the vessels herein contracted for. In order to avail itself of this protection the Contractor must furnish the Owner with the originals of all freight bills, together with copies of the freight tariffs in effect at the date of this contract and the freight tariffs under which the Contractor claims the benefit of this protection, and such other documents and papers as may be necessary to determine what sums, if any, are due the Contractor. Reimbursement to the Contractor for the excess paid over the rates in force at the date of this contract, shall be made monthly, as practicable.

Inspectors and Auditors.

8. The Owner's inspectors, or other duly authorized representatives shall have full and free access to the works of the Contractor and to all work and material on hand. The Owner's auditors shall have the right at reasonable and proper times to inspect the Contractor's accounts, records and original entries, vouchers and supporting papers, but only upon written directions from the Owner's treasurer, general auditor or assistant general auditor. This provision, however, shall not be construed to require the Contractor to keep its accounts in any manner different from that in which they are now kept.

Insurance.

9. The Contractor agrees to insure and keep insured at its own expense for the benefit of the Owner in insurance companies satisfactory to the Owner, or otherwise, said vessels and all materials and supplies for and to be used in construction under this contract against

any and all damage by fire and marine risks, lightning, settling of staging, breakage of ways, and risks of launching during such construction and until final completion and delivery to and acceptance by the Owner; such insurance to be in the usual form and to be payable to the Owner and the Contracor as their interests may appear,
and for an amount not less than the amounts of the install-
98 ments of payment which from time to time have been made: Provided, that the amount of insurance required shall not exceed at any time the amount available in the insurance market, and that before placing the same the Owner has the option of waiving any insurance, or the Owner may itself carry the risk, in either of which events the contract price shall be reduced by an amount corresponding to the cost of said insurance so waived or risk carried by the Owner.

III.

Alterations.

1. The owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions or substitutions not materially affecting the general design of the vessel as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect, as though such alterations, omissions, additions, or substitutions were originally provided for in this contract. If by reason thereof, the cost of the construction hereunder shall be increased, then the sum to be paid by the Owner to the Contractor as herein provided shall be increased to an amount which shall be agreed upon. If the construction shall be rendered less expensive by reason thereof, the sum to be paid shall be decreased by an amount which shall be agreed upon. In case the parties are unable to agree as to the effect of such alterations, omissions, additions and substitutions or the price thereof, the dispute shall be determined as provided by Article VI hereof. Whenever possible the amount by which the purchase price shall be so increased or diminished shall be agreed upon at the time the changes are ordered.

99 *Delay.*

2. If the Contractor be delayed or obstructed in the transaction or completion of the work provided for by this contract by the act, delay, neglect or default of the Owner, or by reason of alterations or additions by the Owner, or the commandeering by the United States Government of materials on the ground or materials purchased by the Contractor but not delivered, or by reason of strikes, fires, lightning, earthquake, flood, riot, insurrection, or war, or by reason of suspension of deliveries of material or machinery for any of the causes above stated, or by reason of instructions given by the Owner under Article III and XI hereof, or by any other cause beyond the reasonable control of the Contractor, beyond the time herein fixed, the time of delivery shall be extended for a period equivalent to the time lost by reason thereof. Provided, that no request for extension

of the contract time shall be considered unless the Contractor, within thirty (30) days from the occurrence of an alleged cause of delay, shall notify the Vice President of the Owner, in writing of the facts and circumstances in each case and of the extent to which the Contractor claims that the completion of the vessel is thereby delayed; and provided further that the Owner may without prejudice to the rights of the Contractor, reserve his decision upon any and all claims for extension until the completion of the vessel, the work in the meantime not to be discontinued or delayed on account thereof. In the event that parties shall not agree as to such extension, such extension shall be determined in accordance with Article VI hereof.

IV.

Forfeiture.

The progress of the work must at all times be satisfactory to the Owner. Upon any failure or omission of the Contractor to
100 make such satisfactory progress, (unless caused by circumstances beyond its control) the Owner may upon thirty (30) days written notice to the Contractor declare this contract forfeited. In that event the Owner may immediately enter the shipyard and take possession of it and its facilities and of the vessels and materials and equipment. The Owner shall thereupon cause to be taken and filed with the United States Shipping Board a full and complete statement and inventory of all work done or begun on or about the vessels and of all materials on hand applicable thereto, the Owner may proceed with the completion of the vessels in accordance with this contract either at the shipyard with its equipment, and facilities, or elsewhere, by contract or otherwise, and in its discretion use for this purpose all suitable materials on hand and included in the inventory.

Provided, however, that if the Contractor can show to the satisfaction of the Director General of the Owner reasonable industry and good faith in the prosecution of the work hereunder, and that the delays have been caused by circumstances over which it had no control, the Contractor shall be allowed such opportunity as the Vice President of the Owner may deem reasonable to complete the work.

V.

Title.

It is agreed that title to all vessels, either completed or under construction, in so far as they shall have been inspected and approved by the Owner, shall be in the United States of America, and that the title for all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in the shipyard or used in the construction of the work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner

101 of its right to direct the replacement of unsatisfactory workmanship and or materials.

VI.

Disputes.

In case the parties fail to agree as to any matter connected with this contract, or any doubt or dispute arises as to the meaning or effect of this contract or of the drawings and specifications which are a part hereof, or as to the manner of doing the work provided for hereunder, or as to materials used or the time to be allowed or the amounts to be paid or allowed for alterations, omissions, additions, or substitutions, or as to any other particular, the matter shall be promptly referred to and determined by the Director General of the Owner, or his successor at the time in office, and his decision shall be final and binding upon the parties.

In case after delivery of a completed vessel to the Owner under this contract (but only in that event), the Contractor shall deem that it is aggrieved by any decision of the Director General as to any disputed matter hereunder of any kind, and shall give notice in writing to the Owner to that effect within sixty (60) days after delivery or after final payment by the Owner, such matter shall be determined by a board which shall consist of three naval architects or engineers or experts to be appointed, one by the Owners, one by the Contractor, and the third arbitrator shall be selected by the two arbitrators first chosen, and if they cannot agree on such third arbitrator, then the latter shall be named by the Classification Society under which the vessels are being constructed. Such board shall, within thirty (30) days after submission of such matter to it, make its determination and its findings (made by a majority of the board) shall be conclusive and binding on both parties.

102 VII.

Time of Essence.

It is agreed by both parties that time is of the essence of this contract. The Contractor will commence and carry through to completion the work under this contract with all possible dispatch, will give precedence in its plant or plants to the work hereunder, subject only to the prior rights, if any, of a department of the United States of America, and will not enter into any other contract or undertake any work or service at its works which will interfere in any material manner with the completion of the work undertaken hereunder.

VIII

Bonus and Liquidated Damages.

Should the Contractor succeed in delivering any of the vessels to the Owner complete on or before the dates above provided, the Owner agrees to pay as premium for advanced delivery the sum of $50,000.00 for each completed vessel so delivered. In the event the Contractor should be delayed in delivering any vessel within the times provided, solely because of any act or default of the Owner under the terms of this contract, and the Contractor could and would have delivered such vessel within the time provided but for the Owner's act or default, and furthermore, if the Contractor shall succeed in delivering such vessel within such extension of time as shall be allowed it because of the Owner's act or default, the aforesaid bonus shall be payable to the Contractor. Any delay due to failure of a common carrier to deliver material or equipment, if shipped within such time as to reach its destination in the ordinary course of business, shall likewise act as an extension of the delivery dates in
103 the manner and for the purpose hereinabove provided. Should the Contractor fail to deliver any of said vessels within thirty (30) days after the dates herein fixed, the Contractor agrees to pay the Owner as liquidated damages on each such vessel the sum of Twenty Five Thousand Dollars ($25,000), provided, however, that, if the Contractor is allowed an extension of time for any of the causes herein set out in Article III, Section Two (2), the aforesaid liquidated damages shall not become due and payable, if the vessel is delivered within such extended time. In the event that some of the vessels are delivered after the times herein fixed and other vessels are delivered prior to the times herein fixed, then the number of days gained on any ship delivered ahead of the schedule date shall be applied and credited against the number of days lost on any ship or ships delivered after the schedule date, and the Contractor shall receive the bonus herein provided on all ships when delivered, deliveries of which have averaged to come within such schedule dates. In case the days lost on any delayed ship have not been made up by prior delivery of ships prior to delivery of such delayed ship, then the bonus on any delayed ship shall be paid when the days lost thereon shall have been made up by subsequent deliveries of ships prior to the scheduled dates.

IX

Liens and Taxes.

The Contractor agrees to deliver the vessels to the Owner free and clear of any lien or encumbrance. The Contractor further agrees upon the delivery of each vessel to deliver to the Owner all papers and documents necessary and or convenient to confer upon the Owner a full and unencumbered title to such vessels including classification certificates as herein provided, together with a full release by

the Contractor to the Owner waiving all further claims or de-
104 mands of any nature, except any claim or demand in regard,
and to the extent, to which the provisions of Article VI have been and/or are invoked. When a payment is to be made hereunder, the Owner may require evidence satisfactory to it to be furnished showing what obligations, for labor and materials, supplies or equipment used or to be used in the construction of the vessels hereunder, are unpaid, and the Owner may at it option, out of any amount not paid to the Contractor hereunder, withhold such amount as may be necessary to satisfy such obligations, or with the consent of the Contractors satisfy the same. In the event of the filing or attaching of any lien or encumbrance (whether valid or invalid) against the vessel before the final payment the Owner may at its option out of any amounts not paid to the Contractor hereunder withhold such amount as may be necessary to satisfy such lien or encumbrance, or may satisfy or remove the same. The Owner will not exercise its option to satisfy or remove any lien or encumbrance if the contractor desires to contest it, provided that the Contractor will immediately take such steps as in the judgment of the Owner will prevent such lien or encumbrance from delaying the construction or delivery of the vessels hereunder, and will indemnify and save the Owner harmless from any costs, charges, or damages incurred by reason of the contesting of such lien. It is hereby further stipulated and agreed by the Contractor for itself and on its own account and for and on account of all persons, firms, associations and corporations furnishing labor and materials for said vessels that this contract is upon the express condition that no lien or rights in rem, of any kind, shall lie or attach upon or against any of said vessels or their machinery, fittings, or equipment, or the materials therefor or any part thereof, or of either for or on account of any work done upon or about said vessels, machinery, fittings, equipment or materials, or of any ma-
terials furnished therefor or in connection therewith, nor for
105 or on account of any other cause or thing or of any claim or
demand of any kind, except the claims of the Owner.

The Contractor agrees to pay all taxes, if any, which may be assessed or assessable against the materials on hand and the vessels under construction up to the time said vessels shall be accepted by the Owner. The Contractor further agrees to pay all income taxes, excess profit taxes, and all other municipal, state, or federal taxes which may be assessed or assessable on account of this contract.

X.

Claims and Patents

The Contractor agrees to protect the Owner from all claims arising from accidents or casualties to employees, workmen, or other persons, in, on or about the work covered by this contract, and to indemnify the Owner against the same.

The Contractor shall be responsible for all claims, if any, made against the Owner for all infringements of patents or patent rights

and for the use of all patented articles and shall defend and save harmless and indemnify the Owner against all such claims, and from all costs, expenses, and damages which it may be obliged to pay by reason of any such infringement of patents or patent rights, or of the use of patented articles, provided that the Owner will, in all instances, notify the Contractor of any claim made against it by reason of any such infringement or use of patented articles at the time when such claim is made, and will promptly notify the Contractor of any suit or suits brought against it therefor and give the Contractor an opportunity to defend the same, and provided that no payment shall be made by the Owner unless with the consent of the Contractor or pursuant to a decree by a proper court in such litigation.

106 Where the Owner specifically orders the use of the patent or patented article, whether or not the existence of the patent is known to the parties hereto, the Owner will hold the Contractor harmless from any expense, loss, or damage arising from a claim of the infringement or use of such patent or patented article, provided that the Contractor notifies the Owner as soon as such a claim is made, and obeys the instructions of the Owner in connection therewith.

XI.

Labor.

This contract is executed and delivered upon the understanding that, if desired by the United States Shipping Board Emergency Fleet Corporation, a provision, satisfactory in form and terms to the United States Shipping Board Emergency Fleet Corporation, restricting the hours of labor of laborers and mechanics employed by the Contractor or by subcontractors and or providing for the payment of extra compensation for overtime work will be inserted in the contract, with the same force and effect as if inserted in the contract before the execution and delivery thereof. If by reason of any such instruction the cost of any vessel hereunder shall be increased, then the sum to be paid by the Owner to the Contractor as herein provided shall be agreed upon by the parties, and if not agreed upon, shall be determined as provided in Article VI hereof.

XII.

Not Assignable.

This contract may not be assigned by the Contractor without the consent of the Owner in writing, provided, however, that nothing in this contract shall be construed as prohibiting the assign-

107 ment of payments due, or to become due, to the Contractor, for the purpose of obtaining credit for furthering the construction hereby undertaken, but the Owner may by writing make such prohibition.

In order to effectuate the provisions of Article IV hereof, the Contractor agrees that every contract made by it for the furnishing to it

of parts, materials, supplies, machinery and equipment, or the use thereof for the purpose of constructing the vessels agreed to be constructed hereunder, will in its terms be made assignable to the Owner.

XIII.

Members of Congress Not to Benefit.

No member of or delegate to Congress, nor Resident Commissioner, is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but this Article shall not apply to any contract within the operation or exception of Section 116 of the Act of Congress approved March 4, 1909 (35 Stats., 1109).

XIV.

Insolvency of Contractor.

Should the Contractor become insolvent, make an assignment or commit any act of bankruptcy, the Owner may and is hereby empowered forthwith to enter, take possession of and complete the work without giving any notice thereof to the Contractor.

XV.

Laborers' and Material Men's Bonds.

The Contractor agrees to procure and keep in force at its own expense, in some company or companies approved by the Owner,
108 all such bond or bonds for the protection of claims and/or liens of laborers and/or material men as may be required by the laws of the United States.

XVI.

Additional Plant Protection.

In addition to the customary precautions that have heretofore been taken by the Contractor for the guarding and protection of its plant, and of the work being carried on therein, the Contractor shall, at its own cost, provide such additional watchmen, guards, and devices for the protection of its plant property, and of the work in progress for the United States Shipping Board Emergency Fleet Corporation, against espionage and acts of war, and any damage or delay that might result therefrom as may be required by the United States Shipping Board Emergency Fleet Corporation. Any saving in insurance by reason thereof to accrue to the Contractor, or the Owner, at its option, may do the work or may require the Contractor to do it, the Owner paying the actual cost thereof, in either of which events the Owner shall receive the sole benefit of any reduction in insurance. Should the Owner do the work or pay the cost thereof, all

devices and fixtures installed and other improvements made or purchased by the Owner, although affixed to the realty, shall be and remain the Owner's property, with the right to remove the same upon the termination of the contract. The Contractor shall have the right to purchase such fixtures and improvements upon the completion of the contract on the basis of cost to the Owner, less the amount received by the Owner by way of reductions in premiums and less a reasonable allowance for depreciation, if any. If the price cannot be agreed upon, it shall be determined by arbitrators appointed in the manner provided for in Article VI. In the event the
109 Owner installs the fixtures or improvements or pays the cost thereof the Contractor agrees that it will execute such chattel mortgage, bill of sale, or other instrument which may be recorded, for the purpose of protecting the Owner's right and title in and to the property so furnished or paid for by it.

XVII

Permits

The Contractor agrees to comply with all laws, rules, regulations and requirements of the Departments of the United States affecting the construction of works, plants, and vessels, in or on navigable waters and the shores thereof, and all other waters subject to the control of the United States, and to procure at its own expense all permits from the United States, State and local authorities which may be necessary to begin and carry on the work hereunder, and at all times to comply with all United States, State and local laws in any way affecting the work carried on under this contract.

XVIII

Contractor's Plant and Facilities

As an inducement to the Owner to enter into this agreement, the Contractor represents that the site for its shipbuilding plant at Seattle is suitable in all respects. That there is ample water for the launching of the vessels to be constructed under this contract with unobstructed navigation to the high seas. Contractor further represents that there now exist or will be provided by the Contractor ample facilities for the transportation of material and employees to Contractor's yard.

110 ## XIX

Checks

Payments hereunder shall be made by the Owner by check addressed to the Contractor by mail at Seattle, Washington.

In Witness Whereof the parties hereto have caused this contract to be signed by their respective officers and their corporate seals to be hereunto affixed, duly attested, on the day above stated.

SKINNER AND EDDY CORPORATION,
By LOUIS TITUS,
Atty. in Fact.
By D. E. SKINNER,
President.

Attest
[SEAL.] L. B. STEDMAN,
Secretary.

Countersigned
SKINNER & EDDY CORPORATION,
By JOHN W. EDDY,
Director.
UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,
By HOWARD COONLEY,
Vice-President.

Attest
[SEAL.] STEPHEN BOURNE,
Secretary.

Approved as to form.

Date 6-6-18
W. H. W., JR.,
Legal Division.

111 RELATOR'S EXHIBIT E 7.

United States Shipping Board Emergency Fleet Corporation,
Philadelphia, Pa.

June 25, 1918.

The Skinner & Eddy Corporation,
Seattle, Washington.

GENTLEMEN:

In reference to Clause XX of Contract No. 324, please be advised that this clause has been inserted in order to give us control of the allocation of orders for certain raw materials, machinery and supplies for the proper accounting of which we are answerable to the War Industries Board. As you probably know, the President of the United States has given broad authority to the War Industries Board for the mobilization of all industries for war purposes and we are required by Mr. Baruch, the Chairman of the War Industries Board, to submit a list of requirements of both raw and finished materials before contracts are placed, so that the War Industries Board may determine, in case the demand far exceeds the supply, where orders shall be placed.

The War Industries Board has no intent to interfere with th processes of business when a sufficient supply of material or equip ment is available and it is injecting itself into this situation only t be helpful to the several Governmental agencies and their subcon tractors and to avoid the delays incident to unregulated congestion.

It is on account of the foregoing that we have been compelled, i spite of the arguments used by Mr. Titus, to insist that this clause h retained.

Very truly yours,

(Signed) CHARLES PIEZ.
Vice-President.

CP LSC.

112 *Contract—Hulls Nos.* 1925-1959, *Inclusive.*

Contract (Lump Sum Basis) for Complete Vessel—Steel Furnishe

Contract made this 1st day of June, 1918, between Skinner & Edd Corporation, a corporation organized under the laws of the State Washington, party of the first part (herein called the contractor and the United States Shipping Board Emergency Fleet Corporatio a corporation organized under the laws of the District of Columb (herein called the Owner), representing the United States America, party of the second part.

For a valuable consideration, the receipt of which is hereby a knowledged by both parties, and in consideration of the mutu promises of the parties, it is agreed as follows:

I.

Shipbuilding Plant.

1. The contractor agrees to maintain upon a suitable site at Seatt Washington, (which site shall provide ample depth of water f launching the vessels herein contracted for and for navigating sa vessels to the high seas) a complete shipbuilding plant, includi office buildings, shops, building slips, plant equipment and appur nances, including proper fire protection, adequate to assure the co struction, completion and delivery of the vessels under the ter and at the times hereinafter provided for.

Work.

2. The contractor hereby agrees to construct at its own risk a
113 expense, under the rules and regulations of the Americ Bureau of Shipping thirty-five (35) steam, steel cargo vesse the first four of which are to be of the Well Deck Type 8,800 tons d. W. C. capacity each, and are to be constructed und the plans and specifications attached to Contract No. 175 between t parties dated January 15, 1918, with such changes and modificatio as have been made therein prior to the date of this agreement. T

remaining thirty-one (31) vessels are to be of the Shelter Deck Type and of 9,600 tons d. w. c. each and to be constructed under the plans and specifications attached to Contract No. 309 S. C. as approved by the Owner on June 15, 1918.

Deliveries.

The Contractor agrees to deliver said vessels complete with propelling machinery, auxiliaries and equipment, with full military requirements, according to said drawings and specifications to the Owner, afloat at the works of the Contractor at Seattle, Washington, as follows:

The	first	vessel,	October	31, 1918.
"	second	"	November	30, 1918.
"	third	"	December	31, 1918.
"	fourth	"	January	31, 1919.
"	fifth	"	February	28, 1919.
"	sixth	"	March	15, 1919.
"	seventh	"	March	30, 1919.
"	eighth	"	April	15, 1919.
"	ninth	"	April	30, 1919.
"	tenth	"	May	31, 1919.
"	eleventh	"	May	31, 1919.
"	twelfth	"	June	15, 1919.
"	thirteenth	"	June	30, 1919.
"	fourteenth	"	July	31, 1919.
"	fifteenth	"	August	31, 1919.
"	sixteenth	"	August	31, 1919.
"	seventeenth	"	September	15, 1919.

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The	eighteenth	vessel,	September	30, 1919.
"	nineteenth	"	October	31, 1919.
"	twentieth	"	November	30, 1919.
"	twenty-first	"	November	30, 1919.
"	twenty-second	"	December	15, 1919.
"	twenty-third	"	December	31, 1919.
"	twenty-fourth	"	January	31, 1920.
"	twenty-fifth	"	February	28, 1920.
"	twenty-sixth	"	February	28, 1920.
"	twenty-seventh	"	March	15, 1920.
"	twenty-eighth	"	March	31, 1920.
"	twenty-ninth	"	April	15, 1920.
"	thirtieth	"	May	15, 1920.
"	thirty-first	"	May	31, 1920.
"	thirty-second	"	June	15, 1920.
"	thirty-third	"	June	15, 1920.
"	thirty-fourth	"	June	30, 1920.
"	thirty-fifth	"	July	31, 1920.

II.

Payments.

1. In consideration of the performance of this agreement by the Contractor, the Owner agrees to pay therefor a lump sum purchase price for each of the completed 8,800 ton vessels of One Million Seven Hundred Sixteen Thousand Dollars ($1,716,000) and for each completed 9,600 ton vessel, the sum of One Million Eight Hundred Forty-five Thousand Dollars ($1,845,000). Such purchase price shall be paid in the following manner:

(a) Five per cent (5%) of the contract price of all said steamers thirty (30) days after signing this contract.

(aa) Five per cent (5%) of the contract price of all of said vessels on or before November 1st, 1918.

115 (b) Ten per cent (10%) of the contract price of each vessel when the keel thereof is laid.

(c) Five per cent (5%) of the contract price of each vessel when fifty per cent (50%) of the floors are in place.

(d) Five per cent (5%) of the contract price of each vessel when fifty per cent (50%) of the tank top is in place.

(e) Five per cent (5%) of the contract price of each vessel when one-half of the frames thereof are in place.

(f) Five per cent (5%) of the contract price of each vessel when all the frames thereof are in place, and stem and stern posts are up.

(g) Ten per cent (10%) of the contract price of each vessel when one-half of the plating is bolted in place.

(h) Ten per cent (10%) of the contract price of each vessel when bulkheads and decks are in place.

(i) Ten per cent (10%) of the contract price of each vessel when said vessel is fully plated, and the decks and the outside of the vessels are entirely caulked.

(j) Ten per cent (10%) of the contract price of each vessel when said vessel is successfully launched.

(k) Ten per cent (10%) of the contract price of each vessel when steel houses are completed and machinery, boilers, auxiliaries and equipment are installed.

(l) The balance of the contract price of each vessel after completion and steam trial and on delivery to and acceptance by the Owner of such completed vessel.

Trial.

2. Before final acceptance of each vessel by the Owner, the Contractor shall make, at the Contractor's expense, a dock trial covering test of main propelling machinery, boiler, auxiliaries and will run a trial trip or trips over a measured mile on Puget Sound, and the vessel without cargo but with fuel ballast, or water tanks filled a

may be required to sufficiently submerge its propeller, will
126 make a speed of eleven and one-half (11½) knots over this measured course. Both dock trial and trial trip or trips, shall be to the reasonable satisfaction of the Owner.

Acceptance.

3. If no defects develop during the aforesaid trial and provided that the vessel has been completed in accordance with the plans and specifications and in full accord with the terms of this contract, the vessel shall be taken over and accepted by the Owner.

Correct Defects.

4. If at any time within six months after the aforesaid acceptance of any of the said vessels any defect in the material or workmanship, other than such as are due to fair wear and tear or misuse, shall appear, same shall be corrected and repaired to the satisfaction of the Director General of the Owner, at a port in this country and at the Contractor's expense, provided that the liability of the builder in this respect shall not extend beyond the actual replacement or remedy of such defective parts, and provided further that if the vessel cannot be conveniently repaired at a port in this country, the builder's liability shall be limited to a sum equivalent to the cost of supplying the material and doing the work in question at a port in the United States. Upon acceptance of each vessel, the Contractor shall furnish a bond in form satisfactory to the Owner, and with a surety or sureties thereon acceptable to the Owner, which bond shall be in the penal sum of Twenty Five Thousand Dollars ($25,000), and shall be conditional upon the full and faithful performance by the Contractor of the terms of this paragraph 4 of Article II.

117 *Inspector's Certificate.*

5. No inspector's certificate given or payment made under the terms of this contract (except the final payment) shall be conclusive evidence of the performance of this contract, either in whole or in part, and no payment shall be construed to be an acceptance of defective work or improper materials. Every facility shall be afforded by the Contractor to the inspectors appointed by the Owner. It shall be the right and duty of such inspectors, either personally or by deputies, to inspect all materials and workmanship entering into the construction, and to accept such materials and or workmanship as are in conformity with specifications, and promptly to reject all materials and or workmanship which do not comply with the specifications, such condemnation, if any, of materials to be made by such inspectors whenever defects are discovered prior to the final acceptance of the vessel by the Owner. Notice of rejection shall be in writing, signed by a designated representative of the Owner.

Wages to Be Paid.

6. It is agreed that the wages paid shall be those fixed by
Shipbuilding Wage Adjustment Board for the Seattle District
fective February 1st, 1918. In the event said Adjustment Bo
shall make any increase in the scale of wages, the net increase
labor cost for the vessel shall be borne by the Owner; in the ev
of any decrease the Owner shall receive the sole benefit thereof.
Sunday, holiday, night work, or overtime work be resorted to
shall be without additional expense to the Owner unless specific
authorized by the Owner in advance.

118 *Protections for Increased Freight Rates.*

7. The Owner agrees to pay the increase in freight rates o
those in force as of the date of this agreement, upon all mater
machinery and equipment used in the vessels herein contracted
In order to avail itself of this protection the Contractor must furn
the Owner with the originals of all freight bills, together w
copies of the freight tariffs in effect at the date of this contract,
the freight tariffs under which Contractor claims the benefit
this protection, and such other documents and papers as may
necessary to determine what sums, if any, are due the Contrac
Reimbursement to the Contractor for the excess paid over the ra
in force at the date of this contract shall be made monthly, if p
ticable.

Inspectors and Auditors.

8. The Owner's inspectors, or other duly authorized represen
tives, shall have full and free access to the works of the Contrac
and to all work and material on hand. The Owner's auditors sh
have the right at reasonable and proper times to inspect the C
tractor's accounts, records and original entries, vouchers, and s
porting papers, but only upon written direction from the Own
treasurer, general auditor or assistant general auditor. This pro
sion, however, shall not be construed to require the Contractor
keep its accounts in any manner different from that in which th
are now kept.

Insurance.

9. The Contractor agrees to insure and keep insured at its o
expense for the benefit of the Owner in insurance companies sa
factory to the Owner or otherwise, said vessels and all materials
supplies for and to be used in construction under this contr
against any and all damage by fire and marine risks, in
119 ning, settling of staging, breakage of ways, and risks
launching during such construction and until final co
pletion and delivery to and acceptance by the Owner, such insura
to be in the usual form and to be payable to the Owner and
Contractor as their interests may appear, and for an amount

less than the amounts of the instalments of payment which from time to time have been made; Provided, that the amount of insurance required shall not exceed at any time the amount available in the insurance market, and that before placing the same the Owner has the option of waiving any insurance, or the Owner may itself carry the risk, in either of which events the contract price shall be reduced by an amount corresponding to the cost of said insurance so waived or risk carried by the Owner.

III.

Alterations.

1. The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions or substitutions not materially affecting the general design of the vessel as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect, as though such alterations, omissions, additions, or substitutions were originally provided for in this contract. If by reason thereof, the cost of the construction hereunder shall be increased, then the sum to be paid by the Owner to the Contractor as herein provided shall be increased to an amount which shall be agreed upon. If the construction shall be rendered less expensive by reason thereof, the sum to be paid shall be decreased by an amount which shall be agreed upon. In case the parties are unable to agree as to the effect of such alterations, omissions, additions and substitutions or the price thereof, the dispute shall be determined as provided by Article VI hereof. Whenever possible the amount by which the purchase price shall be so increased or diminished shall be agreed upon at the time the changes are ordered.

Delay.

2. If the Contractor be delayed or obstructed in the transaction or completion of the work provided for by this contract by the act, delay, neglect or default of the Owner, or by reason of alterations or additions by the Owner, or the commandeering by the United States Government of materials on the ground or materials purchased by the Contractor but not delivered, or by reason of strikes, fires, lightning, earthquake, flood, riot, insurrection, or war, or by reason of suspension of deliveries of material or machinery for any of the causes above stated, or by reason of instructions or orders given by the Owner or the United States under Articles III, XI or XX hereof, or by any other cause beyond the reasonable control of the Contractor, beyond the time herein fixed, the time of delivery shall be extended for a period equivalent to the time lost by reason thereof. Provided, that no request for extension of the contract time shall be considered unless the contractor, within thirty (30) days from the occurrence of an alleged cause of delay shall notify the Director General of the Owner, in writing, of the facts and circumstances

in each case and of the extent to which the Contractor claims that the completion of the vessel is thereby delayed; and provided further that the Owner may without prejudice to the rights of the Contractor, reserve his decision upon any and all claims for extension until the completion of the vessel, the work in the meantime not to be discontinued or delayed on account thereof. In the event that parties shall not agree as to such extension, such extension shall be determined in accordance with Article VI hereof.

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IV.

Forfeiture.

The progress of the work must at all times be satisfactory to the Owner. Upon any failure or omission of the Contractor to make such satisfactory progress, (unless caused by circumstances beyond its control) the Owner may upon thirty (30) days written notice to the Contractor declare this contract forfeited. In that event the Owner may immediately enter the shipyard and take possession of it and its facilities and of the vessels and materials and equipment. The Owner shall thereupon cause to be taken and filed with the United States Shipping Board a full and complete statement and inventory of all work done or begun on or about the vessels and of all materials on hand applicable thereto, the Owner may proceed with the completion of the vessels in accordance with this contract either at the shipyard with its equipment, and facilities, or elsewhere by contract or otherwise, and in its discretion use for this purpose all suitable materials on hand and included in the inventory.

Provided, however, That if the Contractor can show to the satisfaction of the Director General of the Owner reasonable industry and good faith in the prosecution of the work hereunder, and that the delays have been caused by circumstances over which it had no control, the Contractor shall be allowed such opportunity as the Director General of the Owner may deem reasonable to complete the work.

V.

Title.

It is agreed that title to all vessels, either completed or under construction, in so far as they shall have been inspected and approved by the Owner, shall be in the United States of America, and
122 that the title for all material for the furtherance of work under this contract, however and by whomsoever contracted for or assembled or set up in the shipyard or used in the construction of the work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the replacement of unsatisfactory workmanship and or materials.

VI.

Disputes.

In case the parties fail to agree as to any matter connected with this contract, or any doubt or dispute arises as to the meaning or effect of this contract or of the drawings and specifications which are a part hereof, or as to the manner of doing the work provided for hereunder, or as to materials used or the time to be allowed or the amounts to be paid or allowed for alterations, omissions, additions, or substitutions, or as to any other particular, the matter shall be promptly referred to and determined by the Director General of the Owner, or his successor at the time in office, and his decision shall be final and binding upon the parties.

In case after delivery of a completed vessel to the Owner under this contract (but only in that event), the Contractor shall deem that it is aggrieved by any decision of the Director General as to any disputed matter hereunder of any kind, and shall give notice in writing to the Owner to that effect within sixty (60) days after delivery or after final payment by the Owner, such matter shall be determined by a board which shall consist of three naval architects or engineers, or experts to be appointed, one by the Owner, one by the Contractor, and the third arbitrator shall be selected by the two arbitrators first chosen, and if they cannot agree on such third arbitrator, then the latter shall be named by the Classification Society under which the vessels are being constructed. Such board shall, within
123 thirty (30) days after submission of such matter to it, make its determination and its findings (made by a majority of the board) shall be conclusive and binding on both parties.

VII.

Time of Essence.

It is agreed by both parties that time is of the essence of this contract. The Contractor will commence and carry through to completion the work under this contract with all possible dispatch, will give precedence in its plant or plants to the work hereunder, subject only to the prior rights, if any, of a department of the United States of America, and will not enter into any other contract or undertake any work or service at its works which will interfere in any material manner with the completion of the work undertaken hereunder.

VIII.

Bonus and Liquidated Damages.

Should the Contractor succeed in delivering any of the vessels to the Owner complete on or before the dates above provided, the Owner agrees to pay as premium for advanced delivery the sum of $50,-

000 00 for each completed vessel so delivered. In the event the Contractor should be delayed in delivering any vessel within the times provided solely because of any act or default of the Owner under the terms of this contract or any orders given to the Contractor by the Owner and or the United States under Article XX, and the Contractor could and would have delivered such vessel within the time provided but for the Owner's act or default or such orders; and, furtherance, if the Contractor shall succeed in delivering such vessel within such extension of time as shall be allowed it because
124 of the Owner's act or default or such orders, the aforesaid bonus shall be payable to the Contractor. Any delay due to failure of a common carrier to deliver material or equipment, if shipped within such time as to reach its destination in the ordinary course of business, shall likewise act as an extension of the delivery dates in the manner and for the purpose hereinbefore provided. Should the Contractor fail to deliver any of said vessels within thirty (30) days after the dates herein fixed, the Contractor agrees to pay the Owner as liquidated damages on each such vessel the sum of Twenty Five Thousand Dollars ($25,000), provided, however, that if the Contractor is allowed an extension of time for any of the causes herein set out in Article III, Section Two (2), the aforesaid liquidated damages shall not become due and payable, if the vessel is delivered within such extended time. In the event that some of the vessels are delivered after the times herein fixed and other vessels are delivered prior to the times herein fixed, then the number of days gained on any ship delivered ahead of the schedule date shall be applied and credited against the number of days lost on any ship or ships delivered after the schedule date, and the Contractor shall receive the bonus herein provided on all ships when delivered, deliveries of which have averaged to come within such schedule dates. In case the days lost on any delayed ship have not been made up by predelivery of ships prior to delivery of such delayed ship, then the bonus on any delayed ship shall be paid when the days lost thereon shall have been made up by subsequent deliveries of ships prior to the schedule dates.

IX

Liens and Taxes.

The Contractor agrees to deliver the vessels to the Owner free and clear of any lien or encumbrance. The Contractor further
125 agrees upon the delivery of each vessel to deliver to the Owner all papers and documents necessary and or convenient to confer upon the Owner a full and unencumbered title to such vessels including classification certificates as herein provided, together with a full release by the Contractor to the Owner waiving all further claims or demands of any nature, except any claim or demand in regard, and to the extent, to which the provisions of Article VI have been and or are invoked. When a payment is to be made hereunder, the Owner may require evidence satisfactory to it to be furnished showing what obligations, for labor and materials, supplies or equip-

ment used or to be used in the construction of the vessels hereunder, are unpaid, and the Owner may at its option, out of any amount not paid to the Contractor hereunder, withhold such amount as may be necessary to satisfy such obligations, or, with the consent of the Contractor, satisfy the same. In the event of the filing or attaching of any lien or encumbrance (whether valid or invalid) against the vessel before the final payment, the Owner may at its option out of any amounts not paid to the Contractor hereunder withhold such amount as may be necessary to satisfy such lien or encumbrance, or may satisfy or remove the same. The Owner will not exercise its option to satisfy or remove any lien or encumbrance if the Contractor desires to contest it, provided that the Contractor will immediately take such steps as in the judgment of the Owner will prevent such lien or encumbrance from delaying the construction or delivery of the vessels hereunder, and will indemnify and save the Owner harmless from any costs, charges, or damages incurred by reason of the contesting of such lien. It is hereby further stipulated and agreed by the Contractor for itself and on its own account and for and on account of all persons, firms, associations and corporations furnishing labor and materials for said vessels that this contract is upon the express condition that no lien or rights in rem, of any kind, shall lie or attach upon or against any of said
126 vessels or their machinery, fittings, or equipment, or the materials therefor or any part thereof, or of either for or on account of any work done upon or about said vessels, machinery, fittings, equipment or materials, or of any materials furnished therefor or in connection therewith, nor for or on account of any other cause or thing or of any claim or demand of any kind, except the claims of the Owner.

The Contractor agrees to pay all taxes, if any, which may be assessed or assessable against the materials on hand and the vessels under construction up to the time said vessels shall be accepted by the Owner. The Contractor further agrees to pay all income taxes, excess profit taxes, and all other municipal, state, or federal taxes which may be assessed or assessable on account of this contract.

X.

Claims and Patents.

The Contractor agrees to protect the Owner from all claims arising from accidents or casualties to employees, workmen, or other persons, in, on or about the work covered by this contract, and to indemnify the Owner against the same.

The Contractor shall be responsible for all claims, if any, made against the Owner for all infringements of patents or patent rights and for the use of all patented articles, and shall defend and save harmless and indemnify the Owner against all such claims, and from all costs, expenses, and damages which it may be obliged to pay by reason of any such infringement of patents or patent rights, or of the

use of patented articles, provided that the Owner will, in all instances, notify the Contractor of any claims made against it by reason of any such infringement or use of patented articles at the time when such claim is made, and will promptly notify the Contractor of any suit or suits brought against it therefor and give the Contractor an opportunity to defend the same, and provided that no payment shall
127 be made by the Owner unless with the consent of the Contractor or pursuant to a decree by a proper court in such litigation. Where the Owner specifically orders the use of the patent or patented article, whether or not the existence of the patent is known to the parties hereto, the Owner will hold the Contractor harmless from any expense, loss, or damage arising from a claim of the infringement or use of such patent or patented article, provided that the Contractor notifies the Owner as soon as such claim is made, and obeys the instructions of the Owner in connection therewith.

XI.

Labor.

This contract is executed and delivered upon the understanding that, if desired by the United States Shipping Board Emergency Fleet Corporation, a provision, satisfactory in form and terms to the United States Shipping Board Emergency Fleet Corporation, restricting the hours of labor of laborers and mechanics employed by the Contractor or by subcontractors and or providing for the payment of extra compensation for over-time work will be inserted in the contract, with the same force and effect as if inserted in the contract before the execution and delivery thereof. If by reason of any such instruction the cost of any vessel hereunder shall be increased, then the sum to be paid by the Owner to the Contractor as herein provided shall be agreed upon by the parties, and if not agreed upon, shall be determined as provided in Article VI hereof.

XII.

Not Assignable.

This contract may not be assigned by the Contractor without the consent of the Owner in writing, provided, however, that noth-
128 ing in this contract shall be construed as prohibiting the assignment of payments due, or to become due, to the Contractor, for the purpose of obtaining credit for furthering the construction hereby undertaken, but the Owner may by writing make such prohibition.

In order to effectuate the provision of Article IV hereof, the Contractor agrees that every contract made by it for the furnishing to it of parts, materials, supplies, machinery and equipment, or the use thereof for the purpose of constructing the vessels agreed to be constructed hereunder, will in its terms be made assignable to the Owner.

XIII.

Members of Congress Not to Benefit.

No member of or delegate to Congress, nor Resident Commissioner, is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom, but this Article shall not apply to any contract within the operation or exception of Section 116 of the Acts of Congress approved March 4, 1909 (35 Stats. 1109).

XIV.

Insolvency of Contractor.

Should the Contractor become insolvent, make an assignment or commit any act of bankruptcy, the Owner may and is hereby empowered forthwith to enter, take possession of and complete the work without giving any notice thereof to the Contractor.

XV.

Laborers' and Material Men's Bonds.

The Contractor agrees to procure and keep in force at its own expense, in some company or companies approved by the Owner,
129 all such bond or bonds for the protection of claims and/or liens of laborers and or material men, as may be required by the laws of the United States.

XVI.

Additional Plant Protection.

In addition to the customary precautions that have heretofore been taken by the Contractor for the guarding and protection of its plant, and of the work being carried on therein, the Contractor shall, at its own cost, provide such additional watchmen, guards, and devices for the protection of its plant property, and of the work in progress for the United States Shipping Board Emergency Fleet Corporation, against espionage and acts of war, and any damage or delay that might result therefrom as may be required by the United States Shipping Board Emergency Fleet Corporation. Any saving in insurance by reason thereof to accrue to the Contractor. Or the Owner, at its option, may do the work or may require the Contractor to do it, the Owner paying the actual cost thereof, in either of which events the Owner shall receive the sole benefit of any reduction in insurance. Should the Owner do the work or pay the cost thereof, all devices and fixtures installed and other improvements made or purchased by the Owner, although affixed to the realty, shall be and remain the Owner's property, with the right to remove the

same upon the termination of the contract. The Contractor shall have the right to purchase such fixtures and improvements upon the completion of the contract on the basis of cost to the Owner, less the amount received by the Owner by way of reductions in premiums and less a reasonable allowance for depreciation, if any. If the price cannot be agreed upon, it shall be determined by arbitrators appointed in the manner provided for in Article VI. In the event the Owner installs the fixtures or improvements or pays the cost thereof the Contractor agrees that it will execute such
130 chattel mortgage, bill of sale, or other instrument which may be recorded, for the purpose of protecting the Owner's right and title in and to the property so furnished or paid for by it.

XVII

Permits

The Contractor agrees to comply with all laws, rules, regulations and requirements of the Departments of the United States affecting the construction of works, plants and vessels, in or on navigable waters and the shores thereof, and all other waters subject to the control of the United States, and to procure at its own expense all permits from the United States, State and local authorities, which may be necessary to begin and carry on the work hereunder, and at all times to comply with all United States, State and local laws in any way affecting the work carried on under this contract.

XVIII

Contractor's Plant and Facilities

As an inducement to the Owner to enter into this agreement, the Contractor represents that the site for its shipbuilding plant at Seattle is suitable in all respects. That there is ample water for launching of the vessels to be constructed under this contract with unobstructed navigation to the high seas. Contractor further represents that there now exists or will be provided by the Contractor ample facilities for the transportation of material and employees to Contractor's yard.

XIX

131 *Checks*

Payments hereunder shall be made by the Owner by check addressed to the Contractor by mail at Seattle, Washington.

XX

Manner and Priority of Obtaining Materials and Equipment

It is recognized in view of war conditions, that it may become necessary for the United States to exercise control over the manu-

and priority in which materials and equipment are obtained under this contract. It is agreed between the parties hereto that if it is desired by the Owner and or the United States, that all contracts and agreements for equipment and materials to be used under this contract shall be submitted to the Owner and or the United States, and that any orders given to the Contractor by the Owner, or the United States with regard to such contracts and agreements, will be promptly complied with by the Contractor.

In witness whereof the parties hereto have caused this contract to be signed by their respective officers and their corporate seals to be hereunto affixed, duly attested, on the day above stated.

SKINNER & EDDY CORPORATION,
By D. E. SKINNER,
President.

Countersigned:
SKINNER & EDDY CORPORATION,
By JOHN W. EDDY,
Director.

Attest:
[SEAL.] L. B. STEDMAN,
Secretary.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,
By HOWARD COONLEY,
Vice-President.

Attest:
[SEAL.] STEPHEN A. BOURNE,
Secretary.

Approved:
D. H. BENDER,
Comptroller.

Approved as to form.
Dated, 6-12-18.
WILLIAM H. WHITE,
Legal Division.

132 RELATORS' EXHIBIT E-8

Supplemental contract made this 18th day of July, 1918, between Skinner and Eddy Corporation, a corporation organized under the laws of the State of Washington, party of the first part (herein called the Contractor), and the United States Shipping Board Emergency Fleet Corporation, a corporation organized under the laws of the District of Columbia (herein called the Owner), representing the United States of America, party of the second part, witnesseth:

That Whereas, the Contractor is constructing and or is to construct for the Owner fifteen (15) 9,600-ton dead-weight steel cargo carrying vessels under contract No. 300 S. C., dated May 27, 1918,

and thirty one (31) 9,600-ton deadweight steel cargo carrying vess
under contract No. 324 S. C., dated June 1, 1918, and the Contract
believes that the change in the type of construction of said vess
from the Transverse to the Isherwood system would result in earli
deliveries and the price of each vessel so constructed reduced, d
to the use of a lesser amount of steel.

Now, Therefore, for a valuable consideration, receipt whereof
hereby acknowledged by both parties, and in consideration of t
mutual promises of the parties, it is agreed as follows:

I.

It is agreed that relative to the said forty-six (46) 9,600-t
deadweight steam steel cargo carrying vessels now being construct
or to be constructed by the Contractor under said contracts No
309 S. C. and 324 S. C., the Contractor may, at its option, chan
the type of the construction of any of said vessels from the Transver
to the Isherwood system. Notice in writing of such change in t
type of construction of any of said vessels shall be given by t
Contractor to the Owner.

In the event the Contractor elects to make such change in the ty
of construction of any of said vessels, the purchase price of a
such vessel so constructed shall be reduced from One Million Eig
Hundred Forty-Five Thousand Dollars ($1,845,000) to One Millio
Eight Hundred Twenty Thousand Dollars ($1,820,000), and t
plans and specifications of such vessels so changed as to type of c
struction shall be prepared by the Contractor and approved
Owner, the American Bureau of Shipping. Except as to type
construction no change shall be made in the plans and specificatio
Changes in dimensions of vessels will be permitted, but deadweig
tonnage must not be reduced below 9,600 tons and vessels mu
make speed required in contracts 309 S. C. and 324 S. C.

II

In addition to the Fifty Thousand Dollars ($50,000) bon
provided for in said contracts the Owner will pay an additional bon
to the Contractor of Eight Hundred Dollars ($800) per day
vessel for each and every day said vessel is delivered prior to t
respective delivery dates specified in said contracts. In all ot
respects, the clause providing for bonus and liquidated damages
contracts No. 309 S. C. and No. 324 S. C. shall remain in for

133 III

The Contractor may, at its option, construct any of such vess
on the ways of either of its shipyards but this arrangement as to t
place of the construction of vessels shall in no way affect the p
visions for the payment of rental due and payable under the le
dated June 1st, 1918.

IV.

Warranty Regarding Commissions.

The Contractor expressly warrants that it has employed no third persons to solicit or obtain this contract in its behalf or to cause or procure the same to be obtained upon compensation in any way contingent, in whole or in part, upon such procurement; and that it has not paid, or promised or agreed to pay, to any third persons in consideration of such procurement or in compensation for services in connection therewith any brokerage, commission or percentage upon the amount receivable by it hereunder, and that it has not in estimating the contract price demanded by it, included any sum by reason of any such brokerage, commission or percentage, and that all moneys payable to it hereunder are free from obligation to any other persons for services rendered or supposed to have been rendered in the procurement of this contract.

It further agrees that any breach of this warranty shall constitute adequate cause for the annulment of this contract by the Owner and that the Owner may retain to its own use from any sums due or to become due thereunder an amount equal to any brokerage, commission or percentage so paid, or agreed to be paid.

V.

Except as herein provided, all the provisions of said contracts 300 S. C. and 324 S. C. shall be unchanged and shall remain in full force and effect.

134 In witness whereof, the parties hereto have caused this contract to be signed by their respective officers and their corporate seals to be hereunto affixed, duly attested, on the day above stated.

[SEAL.] SKINNER AND EDDY CORPORATION,
By D. E. SKINNER. (Signed)
President.
LOUIS THITUS,
Director.

Attest:
I. B. STEDMAN,
Secretary.

[SEAL.] UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION,
By HOWARD COONLEY. (Signed)
Vice President.

Attest:
(Signed) STEPHEN BOURNE,
Secretary.

Approved as to Form. Date 9/9/18.
(Signed) HARRY F. HELVIG
Legal Division.

Approved
(Signed) D. H. BENDER,
Comptroller
By T. ED. NEW, Asst.

Approved Sept. 18, 1918.
MORRIS DONN FERRIS,
Manager, Contract Division.

Approved 9-10-18.
(Signed) DANIEL H. COX
A. B. H.
Manager Division of Steel Ship Construction

135 RELATOR'S EXHIBIT E-9.

Contract No. 447.

Contract made this 18th day of July, 1918, between Skinner & Ed
Corporation, a corporation organized under the laws of the St
of Washington, party of the first part (herein called the C
tractor) and the United States Shipping Board Emergency Fl
Corporation, Corporation organized under the laws of the D
trict of Columbia, (herein called the Owner) representing t
United States of America, party of the second part.

For a valuable consideration, receipt of which is hereby ackno
edged by both parties and in consideration of the mutual promi
of the parties, it is agreed as follows:

I

Shipyard.

1. The Contractor agrees to maintain upon a suitable site, a co
plete shipbuilding plant, including unobstructed channel to h
seas, office building, shops, building slips, plant equipment and
pertenances including adequate protection against fire, fencing a
other necessary arrangements for protection of the yard and t
Owner's interests against trespassers, necessary and proper hygie
and sanitary conditions, which site shall be served with ample fa
ities for the transportation of materials and employees and shall
so located as to have available sufficient housing accommodatio
for Contractor's employees, all to be satisfactory to the Owner a
adequate to insure the construction, completion and delivery of
vessels under the terms and at the time herein provided for.

Work.

2. The Contractor hereby agrees to construct at its own risk a
expense, under the rules and regulations of the American Bureau
Shipping, twelve (12) steam steel cargo carrying vessels of

shelter deck type and of 9,600 tons deadweight carrying capacity each. The vessels to be constructed in accordance with the drawings and specifications prepared by the Contractor, which shall be identical with the plans and specifications for the 31 vessels, shelter deck type, provided for in Contract #324 S. C. between the parties, except as they may be changed under terms of contract supplemental to #309 S. C. and 324 S. C. It is agreed, however, that the type of construction of said vessels may be changed to the Isherwood construction at the Contractor's option, in which event changes in the dimensions of said vessels will be permitted, provided the
136 deadweight tonnage is not reduced below 9,600 tons and the ships make the speed of 11½ knots under all the required conditions of Article II, Section 2 hereof. If the Contractor exercises its option to change the type of construction to Isherwood construction, then the plans shall be approved by the American Bureau of Shipping. All plans and specifications shall be attached hereto and made a part hereof and shall bear the approval in writing of the Owner.

Deliveries.

3. The Contractor agrees to deliver said vessels complete with propelling machinery, auxiliaries and equipment with full military requirements according to said drawings and specifications to the Owner afloat at the works of the Contractor at Seattle, Washington, as follows:

Two of said vessels on August 31, 1919
" " " " September 30, 1919
" " " " October 31, 1919
" " " " November 30, 1919
" " " " December 31, 1919
" " " " January 31, 1920

4. It is understood and agreed that none of the vessels herein contracted for are to be constructed at what is known as Plant #2 of the Contractor until such time as all of the vessels to be constructed under Contract #324 S. C. and Contract #309 S. C. between the parties have been completed and delivered to the Owner.

II

Price.

1. In consideration of the performance of this agreement by the Contractor the Owner agrees to pay therefor a lump sum purchase price of One Million Eight Hundred Forty-five Thousand
137 Dollars ($1,845,000.) for each of such completed vessels:

Provided, that in the event the Contractor, at its option, changes the type of construction of any of said vessels from the Transverse to the Isherwood system, the purchase price for any such vessel shall be One Million Eight Hundred Twenty Thousand Dollars ($1,820,000.).

Such purchase price shall be paid in the following manner:

(a) Five per cent (5%) of the contract price of all said v
thirty (30) days after signing this contract.

(b) Five per cent (5%) of the contract price of all of said v
on or before November 1st, 1918.

(c) Ten per cent (10%) of the contract price of each vessel
the keel thereof is laid.

(d) Five per cent (5%) of the contract price of each
when fifty per cent (50%) of the floors are in place.

(e) Five per cent (5%) of the contract price of each vessel
fifty per cent (50%) of the tank top is in place.

(f) Five per cent (5%) of the contract price of each vessel
one-half of the frames thereof are in place.

(g) Five per cent (5%) of the contract price of each vessel
all the frames thereof are in place, and stem and stern posts a

(h) Ten per cent (10%) of the contract price of each vessel
one-half of the plating is bolted in place.

(i) Ten per cent (10%) of the contract price of each vessel
bulkhead and decks are in place.

(j) Ten per cent (10%) of the contract price of each vessel
said vessel is fully plated and the decks and the outside
vessels are entirely caulked.

(k) Ten per cent (10%) of the contract price of each vessel
said vessel is successfully launched.

(l) Ten per cent (10%) of the contract price of
138 vessel when steel houses are completed and machi
boilers, auxiliaries and equipment are installed.

(m) The balance of the contract price of each vessel after
pletion and steam trial and on delivery to and acceptance b
Owner of such completed vessel.

Trial

2. Before trial acceptance of each vessel by the Owner, the
tractor shall make, at the Contractor's expense, a dock trial co
test of main propelling machinery, boiler, auxiliaries and wi
a trial trip or trips over a measured mile on Puget Sound, an
vessel without cargo but with fuel ballast, or water tanks fil
may be required to sufficiently submerge its propeller, will m
speed of eleven and one-half (11½) knots over this mea
course. Both dock trial and trial trip or trips shall be to the r
able satisfaction of the Owner.

Acceptance

3. If no defects develop during the aforesaid trial and pro
that the vessel has been completed in accordance with the
and specifications and in full accord with the terms of this co
the vessel shall be taken over and accepted by the Owner.

Correct Defects.

4. If at any time within six months after the aforesaid acceptance of any of the said vessels any defect in the material or workmanship, other than such as are due to fair wear and tear or misuse, shall appear, same shall be corrected and repaired to the satisfaction of the Director General of the Owner, at a port in the United
139 States and at the Contractor's expense, provided that the liability of the builder in this respect shall not extend beyond the actual replacement or remedy of such defective parts, and provided, further, that if the vessel cannot be conveniently repaired at a port in this country, the builder's liability shall be limited to a sum equivalent to the cost of supplying the material and doing the work in question at a port in the United States. Upon acceptance of each vessel, the Contractor shall furnish a bond in form satisfactory to the Owner, and with a surety or sureties thereon acceptable to the Owner, which bond shall be in the penal sum of Twenty Five Thousand Dollars ($25,000) and shall be conditional upon the full and faithful performance by the Contractor of the terms of this paragraph 4 of Article II.

Inspector's Certificate.

5. No inspector's certificate given or payment made under the terms of this contract (except the final payment) shall be conclusive evidence of the performance of this contract, either in whole or in part, and no payment shall be construed to be an acceptance of defective work or improper materials. Every facility shall be afforded by the Contractor to the inspectors appointed by the Owner. It shall be the right and duty of such inspectors, either personally or by deputies, to inspect all materials and workmanship entering into the construction, and to accept such materials and or workmanship as are in conformity with specifications, and promptly to reject all materials and or workmanship which do not comply with the specifications, such condemnation, if any, of materials to be made by such inspectors whenever defects are discovered prior to the final acceptance of the vessel by the Owner. Notice of rejection shall be in writing, signed by a designated representative of the Owner.

140 *Wages to be Paid.*

6. It is agreed that the wages paid shall be those fixed by the Shipbuilding Wage Adjustment Board for the Pacific Coast District, effective as of the date of this contract. In the event the Adjustment Board shall make any increase in the scale of wages, the net increase in labor cost for the vessels shall be borne by the Owner; in the event of any decrease the Owner shall receive the sole benefit thereof. If Sunday, holiday, night or overtime work be resorted to, it shall be without additional expense to the Owner unless specifically authorized by the Owner in advance.

Protection for Increased Freight Rates.

7. The Owner agrees to pay the increase in freight rates over those in force as of June 1, 1918, upon all material, machinery and equipment used in the vessels herein contracted for. In order to avail itself of this protection the Contractor must furnish the Owner with the originals of all freight bills, together with copies of the freight tariffs in effect as of June 1, 1918, and the freight tariffs under which the Contractor claims the benefit of this protection, and such other documents and papers as may be necessary to determine what sums if any are due the Contractor. Reimbursement to the Contractor for the excess paid over the rates in force as of June 1, 1918, shall be made monthly if practicable.

Inspectors and Auditors.

8. The Owner's inspectors or other duly authorized representatives shall have full and free access to the works of the Contractor and to all work and material on hand. The Owner's auditors shall have the right at reasonable and proper times to inspect the Contractor's accounts, records and original entries, vouchers and supporting papers, but only upon written direction from the Owner's inspector general auditor or assistant general auditor. This provision, however, shall not be construed to require the Contractor to keep its accounts in any manner different from that in which they are now kept.

Insurance.

9. The Contractor agrees to insure and keep insured at its own expense for the benefit of the Owner in insurance companies satisfactory to the Owner or otherwise, said vessels and all materials and supplies for and to be used in construction under this contract against fire and all damages by fire and marine risks, lightning, settling or staging, breakage of ways, and risks of launching during such construction and until final completion and delivery to and acceptance by the Owner, such insurance to be in the usual form and to be payable to the Owner and the Contractor as their interests may appear, and for an amount not less than the amounts of the installments of payment which from time to time have been made: Provided, that the amount of insurance required shall not exceed at any time the amount available in the insurance market, and that before placing the same the Owner has the option of waiving any insurable risk or the Owner may itself carry the risk, in either of which events the contract price shall be reduced by an amount corresponding to the cost of said insurance so waived or risk carried by the Owner.

III

Alterations

1. The Owner shall have the right, but only by orders in writing, to make such reasonable alterations, omissions, additions, or
142 substitutions not materially affecting the general design of the vessels as the Owner may deem necessary. The Contractor agrees to accede to and carry the same into effect, as though such alterations, omissions, additions or substitutions were originally provided for in this contract. If by reason thereof the cost of construction hereunder shall be increased, then the sum to be paid by the Owner to the Contractor as herein provided shall be increased by an amount which shall be agreed upon. If the construction shall be rendered less expensive by reason thereof, the sum to be paid shall be decreased by an amount which shall be agreed upon. In case the parties are unable to agree as to the effect of such alterations, omissions, additions and substitutions or the cost thereof, the dispute shall be determined as provided for by Article VI hereof. Whenever possible the amount by which the purchase price shall be so increased or diminished shall be agreed upon at the time changes are ordered.

Delay

2. If the Contractor be delayed or obstructed in the transaction or completion of the work provided for by this contract by the act, delay, neglect or default of the Owner, or by reason of alterations or additions by the Owner, or the commandeering by the United States Government of materials on the ground or materials purchased by the Contractor but not delivered, or by reason of strikes, fires, lightning, earthquake, flood, riot, insurrection, or war, or by reason of suspension of deliveries of material or machinery for any of the causes above stated, or by delay or failure of manufacturers to deliver material or machinery, or by reason of instructions given by Owner under Articles XI and XX hereof, or by any other cause beyond the reasonable control of the Contractor, beyond the time herein fixed, the time of delivery shall be extended for a period
143 equivalent to the time lost by reason thereof. Provided, that no request for extension of the contract time shall be considered unless the Contractor, within twenty (20) days from the occurrence of an alleged cause of delay, shall notify the Director General of the Owner, in writing, of the facts and circumstances in each case and of the extent to which the Contractor claims that the completion of the vessel is thereby delayed, and provided further that the Owner may, without prejudice to the rights of the Contractor, reserve its decision upon any and all claims for extension until the completion of the vessel, the work in the meantime not to be discontinued or delayed on account thereof. In the event that the parties shall not agree as to such extension, such extension shall be determined in accordance with Article VI hereof.

IV.

Forfeiture.

The progress of the work must at all times be satisfactory to the Owner. Upon any failure or omission of the Contractor to make such satisfactory progress (unless caused by circumstances beyond its control), the Owner may declare this contract forfeited. In that event the Owner may immediately enter the shipyard and take possession of it and its facilities and of the vessels and materials and equipment. The Owner shall thereupon cause to be taken and filed with the United States Shipping Board a full and complete statement and inventory of all work done or begun on or about the vessels and of all materials on hand applicable thereto. The Owner may proceed with the completion of the vessels whether at the Contractor's shipyard with its equipment and facilities, or elsewhere, by contract or otherwise, and in its discretion use for this purpose all suitable materials on hand and included in the inventory and Contractor's shipyard and facilities, or any part thereof.

Provided, however, That if the Contractor can show to the
144 satisfaction of the Director General of the Owner reasonable industry and good faith in the prosecution of the work hereunder, and that the delays have been caused by circumstances over which it had no control, the Contractor shall be allowed such opportunity as the Director General of the Owner may deem reasonable to complete the work.

V

Title.

It is agreed that title to all vessels (either completed or under construction) in so far as they shall have been inspected and approved by the Owner, shall be in the United States of America, and that the title to all material for the furtherance of work under this contract, however, and by whomsoever contracted for or assembled or set up in the shipyard or used in the construction of the work under this contract, shall be in the Owner at all times. Nothing contained herein, however, shall be construed as a waiver by the Owner of its right to direct the replacement of unsatisfactory workmanship and or materials at the Contractor's expense.

VI

Disputes.

In case the parties fail to agree as to any matter connected with this contract, or any doubt or dispute arises as to the meaning or effect of this contract or of the drawings and specifications which are a part hereof, or as to the manner of doing the work provided for hereunder, or as to the materials used or the time to be allowed

or the amounts to be paid or allowed for alterations, omissions, additions, or substitutions, or as to any other particular, the matter shall be promptly referred to and determined by the Director General of the Owner, or his successor at the time in office, and his decision shall be final and binding upon the parties.

In case, after delivery of a completed vessel to the owner under this contract (but only in that event), the Contractor shall deem that it is aggrieved by any decision of the Director General as to any disputed matter hereunder of any kind, and shall give notice in writing to the Owner to that effect within sixty (60) days after delivery or after final payment by the Owner, such matter shall be determined by a board which shall consist of three naval architects or engineers, or other experts to be appointed one by the Owner, one by the Contractor, and the third arbitrator shall within ten (10) days be selected by the two arbitrators first chosen, and if they cannot agree on such third arbitrator, then the latter shall be named by the Classification Society under which the vessels are being constructed. Such Board shall, within thirty (30) days after submission of such matter to it, make its determination and its findings (made by a majority of the board) shall be conclusive and binding on both parties.

VII

Time of Essence

It is agreed by both parties that time is of the essence of this contract. The Contractor shall commence and carry through to completion the work under this contract with all possible dispatch, shall give precedence in its plant or plants to the work hereunder, subject only to the prior rights, if any, of a department of the United States of America, and will not enter into any other contract or undertake any other work or service which will interfere in any material manner with the completion of the work undertaken hereunder.

VIII

Bonus and Liquidated Damages

Should the Contractor succeed in delivering any of the vessels to the Owner complete on or before the dates above provided, the Owner agrees to pay as premium for advanced delivery the sum of $50,000.00 for each complete vessel so delivered. In the event the Contractor should be delayed in delivering any vessel within the times provided solely because of any act or default of the Owner under the terms of the contract or any orders given to the Contractor by the Owner and or the United States under Article XX, and the Contractor could and would have delivered such vessel within the time provided but for the Owner's act or default or such orders, and, furthermore, if the Contractor shall succeed in delivering such vessel within such extension of time as shall be allowed it because of the Owner's act

or default or such orders the aforesaid bonus shall be payable to the Contractor. Any delay due to failure of a common carrier to deliver material or equipment, if shipped within such time as to reach its destination in the ordinary course of business, shall likewise act as an extension of the delivery dates in the manner and for the purpose hereinbefore provided. Should the Contractor fail to deliver any of said vessels within thirty (30) days after the dates herein fixed, the Contractor agrees to pay the Owner as liquidated damages on each such vessel the sum of Twenty-five Thousand Dollars ($25,000) provided, however, that if the Contractor is allowed an extension of time for any of the causes herein set out in Article III, Section two (2), the aforesaid liquidated damages shall not become due and payable, if the vessel is delivered within such extended time. In the event that some of the vessels are delivered after the times herein fixed and other vessels are delivered prior to the
times herein fixed, then the number of days gained on any
147 ship delivered ahead of the schedule date shall be applied and credited against the number of days lost on any ship or ships delivered after the schedule date, and the Contractor shall receive the bonus herein provided on all ships when delivered, deliveries of which have averaged to come within such schedule dates. In case the days lost on any delayed ship have not been made up by prior deliveries of ships prior to delivery of such delayed ship, then the bonus on any delayed ship shall be paid when the days lost thereon shall have been made up by subsequent deliveries of ships prior to the schedule date. In addition to the Fifty Thousand Dollars ($50,000) bonus provided for herein, the Owner agrees to pay to the Contractor the sum of Eight Hundred Dollars ($800.00) per day per vessel for each and every day that said vessel is delivered prior to the delivery date specified herein.

IX

Liens and Taxes

The Contractor agrees to deliver the vessels to the Owner free and clear of any lien or encumbrance. The Contractor further agrees upon the delivery of each vessel to deliver to the Owner all papers and documents necessary and or convenient to confer upon the Owner a full and unincumbered title to such vessels, including classification certificates as herein provided, and such other certificates and documents as may be necessary or required by law, together with a full release by the Contractor to the Owner waiving all further claims or demands of any nature except any claim or demand in regard and to the extent to which the provisions of Article VI hereof have been and or are invoked. When a payment is to be made hereunder the Owner may require evidence satisfactory to it to be furnished showing what obligations for labor and materials, supplies or equipment used or to be used in the construction of the vessels hereunder
are unpaid, and the Owner may at its option and of any
148 amount not paid to the Contractor hereunder, withhold such

amount as may be necessary to satisfy such obligations, or with the consent of the Contractor satisfy the same. In the event of the filing or attaching of any lien or encumbrance (whether valid or invalid) against any of the vessels before the final payment, the Owner may at its option out of any amounts not paid to the Contractor hereunder withhold such amount as may be necessary to satisfy such lien or encumbrance, or may satisfy or remove the same. The Owner will not exercise its option to satisfy or remove any lien or encumbrance if the Contractor desires to contest it, provided that the Contractor will immediately take such steps as in the judgment of the Owner will prevent such lien or encumbrance from delaying the construction or delivery of the vessels hereunder, and will indemnify and save the Owner harmless from any cost, charges, or damages incurred by reason of the contesting of such lien. It is hereby further stipulated and agreed by the Contractor for itself and on its own account and for and on account of all persons, firms, associations and corporations furnishing labor and materials for said vessels that this contract is upon the express condition that no lien or rights in rem, of any kind, shall lie or attach upon or against any of said vessels or their machinery, fittings, or equipment, or the materials therefor, or any part thereof, or for or on account of any work done upon or about said vessels, machinery, fittings, equipment or materials, or of any materials furnished therefor or in connection therewith, nor for or on account of any other cause or thing, or of any claim or demand of any kind, except the claims of the Owner.

The Contractor agrees to pay all the taxes, if any, which may be assessed or assessable against the materials on hand and the vessels under construction up to the time said vessels shall be accepted by the Owner. The Contractor further agrees to pay all income taxes, excess profit taxes, and all other municipal, state, or federal taxes which may be assessed or assessable on account of this contract.

149 X

Claims and Patents

The Contractor agrees to protect the Owner from all claims arising from accidents or casualties to employees, workmen, or other persons in, on or about the work covered by this contract, and to indemnify the Owner against the same.

The Contractor shall be responsible for all claims, if any, made against the Owner for all infringements of patents or patent rights and for the use of all patented articles, and shall defend and save harmless and indemnify the Owner against all such claims, and from all costs, expenses, and damages which the Owner may be obliged to pay by reason of any such infringement of patents or patent rights, or of the use of patented articles, provided that the Owner will, in all instances, notify the Contractor of any claims made against it by

reason of any such infringement or use of patented articles at the time when such claims is made, and will promptly notify the Contractor of any suit or suits brought against it therefor and give the Contractor an opportunity to defend the same, and provided that no payment shall be made by the Owner unless with the consent of the Contractor or pursuant to a decree of a proper court in such litigation. Where the Owner specifically orders the use of the patent or patented articles, whether or not the existence of the patent is known to the parties hereto, the Owner will hold the Contractor harmless from any expense, loss or damage arising from a claim of the infringement or use of such patent or patented articles, except when the Contractor's contract plan and or specifications provide for such use, and provided that the Contractor notifies the Owner as soon as such claim is made, and obeys the instruction of the Owner in connection therewith.

XI

Labor

This contract is executed and delivered upon the understanding that, if desired by the United States Shipping Board Emergency Fleet Corporation, a provision satisfactory in form and terms to the United States Shipping Board Emergency Fleet Corporation, restricting the hours of labor of laborers and mechanics employed by the Contractor or by Subcontractors and or providing for the payment of extra compensation for overtime work, will be inserted in the contract, with the same force and effect as if inserted in the contract before the execution and delivery thereof. If by reason of any such instruction the cost of any vessel hereunder shall be increased, then the sum to be paid by the Owner to the Contractor as herein provided shall be agreed upon by the parties, and if not agreed upon, shall be determined as provided in Article VI hereof.

XII

Not Assignable

This contract may not be assigned by the Contractor without the consent of the Owner in writing, provided, however, that nothing in this contract shall be construed as prohibiting the assignment of payments due or to become due to the Contractor, for the purpose of obtaining credit for furthering the construction hereby undertaken, but the Owner may by writing make such prohibition.

In order to effectuate the provisions of Article IV hereof, the Contractor agrees that every contract made by it for the furnishing of parts, materials, supplies, machinery and equipment, or the use thereof for the purpose of constructing the vessels agreed to be constructed hereunder, will in its terms be made assignable to the Owner.

XIII

Members of Congress Not to Benefit.

No member of or Delegate to Congress, nor Resident Commissioner, is or shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this Article shall not apply to any contract within the operation or exception of Section 116 of the Act of Congress approved March 4, 1909, (35 Stats. 1109).

XIV

Insolvency of Contractor.

Should the Contractor become insolvent, make an assignment or commit any act of bankruptcy, the Owner may and is hereby empowered forthwith to enter, take possession of and complete the work without giving any notice thereof to the Contractor.

XV

Laborers and Material Men's Bonds.

The Contractor agrees to procure and keep in force at its own expense, in some company or companies approved by the Owner, all such bond or bonds for the protection of claims and or liens of laborers and or material men, as may be required by the laws of the United States or any State in which Contractor is doing any work.

152 XVI

Additional Plant Protection.

In addition to the customary precautions that have heretofore been taken by the Contractor for the guarding and protection of its plant and of the work being carried on therein, the Contractor, shall, at its own cost, provide such additional watchmen, guards, and devices for the protection of its plant and property and of the work in progress for the Owner against fire, espionage and acts of war, and any damage or delay that might result therefrom as may be required by the Owner, and the Contractor further agrees at its own expense to promptly comply with all instructions given it by the Owner in regard to the management and conduct of its fire protection, watching and guarding systems; any saving in insurance by reason thereof to accure to the Contractor. Or the Owner, at its option, may furnish and install such devices, in which event the Owner shall receive the benefit of any reduction in insurance as a result thereof. Should the Owner install such devices and fixtures although affixed to the realty, they shall be and remain the Owner's property, with the right to remove the same upon the termination of this contract.

The Contractor shall have the right to purchase such fixtures and improvements upon the completion of the contract on the basis of cost to the Owner, less the amount received by the Owner by way of reductions in premiums and less a reasonable allowance for depreciation, if any. If the price cannot be agreed upon it shall be determined by arbitrators appointed in the manner provided for in Article VI. In the event the Owner installs the fixtures or improvements or pays the cost thereof, the Contractor agrees that it will execute such chattel mortgage, bill of sale, or other instrument which may be recorded, for the purpose of protecting the Owner's
153 right and title in and to the property so furnished or paid for by it.

XVII

Permits

The Contractor agrees to comply with all laws, rules, regulations and requirements of the Departments of the United States affecting the construction of works, plants and vessels in or on navigable waters and the shores thereof, and all other waters subject to the control of the United States, and to procure at its own expense all permits from the United States, State and local authorities which may be necessary to begin and carry on to completion the work hereunder, and at all times to comply with all United States, State and local laws in any way affecting the work carried on under the contract.

XVIII

Contractor's Plant and Facilities

As an inducement to the Owner to enter into this agreement, the Contractor represents that the site for its shipbuilding plant in Seattle is suitable in all respects. That there is ample water for launching of the vessels to be constructed under this contract with unobstructed navigation to the high seas. Contractor further represents that there now exists or will be provided by the Contractor ample facilities for the transportation of material and employees to Contractor's yard.

XIX

Warranty Respecting Commissions

The Contractor expressly warrants that it has employed no third persons to solicit or obtain this contract in its behalf nor has it
154 caused or procured the same to be obtained upon compensation in any way contingent, in whole or in part, upon such procurement, and that it has not paid, or promised or agreed to pay to any third persons in consideration of such procurement or in consideration for services in connection therewith any brokerage, commission or percentage upon the amount receivable by it hereunder, and that it has not in estimating the contract price demanded

it, included any sum by reason of any such brokerage, commission, or percentage, and that all moneys payable to it hereunder are free from obligation to any other persons for services rendered or supposed to have been rendered in the procurement of this contract.

It further agrees that any breach of this warranty shall constitute adequate cause for the annulment of this contract by the Owner and that the Owner may retain to its own use from any sum due or to become due thereunder an amount equal to any brokerage commission or percentage so paid, or agreed to be paid.

XX

Manner and Priority of Obtaining Materials and Equipment

It is recognized, in view of war conditions that it may become necessary for the United States to exercise complete control over the manner and priority in which materials, supplies and equipment necessary for the work hereunder are obtained by, or furnished to, the Contractor. It is agreed between the parties hereto that if required by the owner and or the United States, the Contractor will promptly submit to the Owner and or the United States a classified schedule of the Contractor's requirements for all materials, supplies and equipment to be used under this contract, and copies of any or all contracts, agreements or orders for such materials, supplies or equipment, and the Contractor hereby agrees that it will promptly comply with, and be bound by, any and all instructions issued by the Owner and or the United States with respect to such contracts, agreements or orders for materials, supplies and equipment.

XXI

Checks

Payments hereunder shall be made by the Owner by check addressed to the Contractor by mail at Seattle, Washington.

In witness whereof the parties hereto have caused this contract to be signed by their respective officers and their corporate seals to be hereunto affixed, duly attested, on the day above stated.

SKINNER & EDDY CORPORATION.

[SEAL] By D. E. SKINNER. (Signed)
President.

Attest
(Signed) L. B. STILLMAN.
Secretary.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION.

[SEAL] By HOWARD COONLEY. (Signed)
Vice President.

Attest:
(Signed) STEPHEN N. BOURNE,
Secretary.

Approved 9-10-18
(Signed) DANIEL H. COX,
Manager Division of Steel Ship Construction.

Approved as to form. Date 9/9/18.
(Signed) HARRY F. HELVIG,
Legal Division.

Approved
(Signed) D. H. BENDER,
Comptroller.
By T. ED. NEW, *Asst.*

Approved Sept. 18, 1918.
(Signed) MORRIS HOXX FERRIS,
Manager Contract Division.

156 RELATOR'S EXHIBIT E-10

Supplemental Agreement to Contracts No. 309, S. C. Hulls 17[illegible] 1745, Inclusive, No. 324, S. C. Hulls 1929-1950, Inclusive, No. 447, S. Hulls 2292-2301, Between Skinner & Eddy Corporation and United States Shipping Board Emergency Fleet Corporation.

Supplemental agreement executed in triplicate the tenth day December, 1918 between Skinner & Eddy Corporation, a corpo tion under the laws of the State of Washington (hereinafter cal the contractor) and the United States Shipping Board Emergen Fleet Corporation, a corporation under the laws of the District Columbia representing the United States of America (hereina called the owner). Witnesseth:

1. The contractor is constructing or is to construct for the ow fifteen (15) 9,600 ton deadweight steel cargo carrying vessels un contract 309, S. C. dated May 27, 1918 and thirty-one (31) 9,6 ton steel cargo carrying vessels under contract 324, S. C. dated J 1, 1918 and twelve (12) 9,600 ton deadweight steel cargo carry vessels under contract 447, S. C. dated July 18, 1918 under the te and conditions set forth in said contracts and amendments ther

2. Under the provisions of contract 447, S. C. and amendme to contract 309, S. C. and 324, S. C. (dated July 18, 1918) the c tractor was given the option to change the type of construction any of said fifty-eight vessels from the Transverse to the Isherw System and in the event the contractor elected to make such cha in the type of construction in any such vessels, the purchase p of any such vessel so constructed was to be reduced $27,000, to from $1,847,000 to $1,820,000.

3. Pursuant to supplemental agreement of July 18, 1918, al referred to the contractor has proceeded to change the type of

struction of fourteen of said fifty-eight vessels from the Transverse to the Isherwood System and is constructing same in accord therewith.

157 4. In view of the fact (recognized by the parties hereto) there was not, at the time of entering into the supplemental agreement aforesaid or contract 147 S. C. a definite and complete understanding or meeting of the minds as to the character, expense or extent of the alterations contemplated, permissible under or required by the proposed change of construction from the Transverse to the Isherwood System, and in order to settle and dispose of differences of opinion and controversies incident to and resulting from the above stated facts, the parties hereto have, in consideration of the premises and the mutual promises herein, agreed to and do hereby amend said original contracts as heretofore amended and agree as follows:

(a) The owner is to accept the fourteen vessels which the contractor has already proceeded to change from the Transverse to the Isherwood System, paying the contractor One Million Seven Hundred Ninety-five Thousand ($1,795,000) for each of the said fourteen vessels, which said sum the contractor agrees to accept in full payment therefor.

(b) The remaining forty-four vessels covered by said contracts are to be constructed under the Transverse System in accord with the original plans and specifications and at the original contract price, to wit, One Million Eight Hundred Forty-five Thousand ($1,845,000) for each complete vessel.

Provided, however, the lines of the forty-four vessels above referred to shall be subject to change at option of the Emergency Fleet Corporation and at the option of the owner of the Isherwood type of construction may be called for on the vessels—in which event any proper credit to the owner resulting from this form of construction shall be allowed by the contractor.

Except as herein provided the provisions of said contracts, 158 [illegible] 324 S. C. and 147 S. C. shall be unchanged and remain in full force and effect.

[SEAL.] SKINNER & EDDY CORPORATION
By D. J. SKINNER,
President.

Attest:
By J. E. STEDMAN,
Secretary.

[SEAL.] SKINNER & EDDY CORPORATION
By H. G. SEARORN,
Director.

[SEAL.] UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION.
By HOWARD COONLEY,
Vice President.

Attest
By WAYNE V. O'NEIL,
Assistant Secretary.

Approved as to form.

Date 12-11-18

CAMP MORSEY,
Legal Division.

Noted
D. H. BENDER,
Comptroller.

Approved 12-11-18
DANIEL H. COX
Manager Division of Steel Ship Construction.

Approved Dec. 11 P. M.
MORRIS BROWN FERRIS
Manager Contract Division.

159 RELATOR'S EXHIBIT F

This indenture, Made the First day of June, 1918, between United States Shipping Board Emergency Fleet Corporation, a corporation organized and existing under the laws of the District of Columbia, representing the United States of America, party of the first part, hereinafter called Lessor, and Skinner & Eddy Corporation, a corporation organized and existing under the laws of the State of Washington, party of the second part, hereinafter called Lessee.

Lessor, having entered into an agreement with Seattle Construction and Drydock Company, bearing date 10th day of May, 1918, to acquire certain assets of said company, the transfer of which by said agreement, is to take effect as of the close of the business of May 31, 1918, and Lessee having agreed with Lessor to lease the property so acquired upon terms and conditions herein set forth.

Now, therefore, this indenture, witnesseth, that Lessor has let and by these presents does grant, demise and to farm let unto Lessee and Lessee does hereby lease from lessor the following described property, real and personal, to wit:

The buildings, ways, shops and premises situate in the City of Seattle, State of Washington, consisting of approximately 33 acres of ground including the harbor area, bounded and described as follows:

Beginning at a point on the east line of Block 368, Seattle Tide Lands, which point is 3 feet south of the northeast corner of lot 5 of said block; thence west along a line parallel to and 3 feet distant south of the north line of said lot 5 to the inner harbor line; thence south 17 degrees, 14 minutes and 15 seconds west along the said

inner harbor line to the north line of Connecticut street; thence east along the said north line of Connecticut Street 709.254 feet; thence north 188.5 feet to the south line of lot 16 in said block 368, intersecting the said south line at a point 448.611 feet west of the southeast corner of said lot; thence east along the said south line of lot 16, 448.611 feet to the east line of said block 368; thence northeasterly and north along the east line of block 368 to point 3 feet south of the northeast corner of lot 5 at the point beginning (excepting therefrom the south 15 feet of lot —, block 368) together with all the right, title and interest of Lessor, secured by it from Seattle Construction and Drydock Company, in or to lands under water adjacent to the tract above described.

Together with a certain strip of land approximately 45 feet by 55 feet, lying in lot 17, block 368, and also all the right, title and interest of lessor, formerly all the right, title and interest of Seattle Construction and Drydock Company, in and to certain property lying immediately north of the first tract hereinbefore referred to in and by virtue of a certain lease or agreement entered into between the owner of said property and Seattle Construction and Drydock Company, together with the plant and all equipment, fixed and portable, and machinery, wharves, piers, caissons, docks other than drydocks, structures, superstructures, erections and fixtures, and all other appurtenances and accessories purchased by Lessor from Seattle Construction and Drydock Company, by the agreement of May 10th hereinbefore referred to, exclusive of any property to be removed to the Tacoma plant of the Seattle Company, under and by virtue of the terms of the said contract of purchase and sale.

To have and to hold the above described property and premises, which will be hereinafter referred to as the "demised premises," unto Lessee from the first day of June nineteen hundred and eighteen for and during and until the full end and term of two (2) years thence next ensuing, that is to say, until the first day of June, nineteen hundred and twenty.

Yielding and Paying for the demised premises unto Lessor as and for rent reserved to Lessor, the following sums at the times specified, to-wit: The sum of One hundred and twenty five thousand ($125,000.00) dollars for the first of the thirty periods of demised term, that is to say, from the first day of June, nineteen hundred and eighteen up to and including the date upon which the first of thirty-five (35) certain ships to be constructed by Lessee at the demised premises is to be delivered to Lessor by the terms of the construction contract about to be entered into between the parties, for each of the twenty-nine additional periods thereafter, the sum of One hundred and twenty five thousand ($125,000.00) dollars, to be paid at the termination of the successive periods, viz: as and when each of the next twenty-nine (29) of the said thirty-five (35) ships is to be delivered by the terms of the construction contract.

If Lessee shall deliver ships under the construction contract prior to the date specified in the construction contract, the equivalent period of the demised term shall be deemed to

have terminated at the date of said prior delivery and the rent reserved for said period shall become due and payable at the date of actual delivery.

Provided always, that if it shall happen that the said rent or any part thereof shall not be paid on any day on which the same ought to be paid as aforesaid, or within thirty days thereafter, or if the Lessee shall during the term of this lease vacate or abandon the aforesaid premises or violate any covenant, agreement or proviso by Lessee to be performed or fulfilled under the terms hereof, which violation shall continue for a period of thirty days after notice thereof, then and in any such case, and at all times thereafter, it shall and may be lawful for Lessor into the said demised premises, or any part thereof, in the name of the whole to re-enter and to possess, hold and enjoy the same again, as of its former estate and interest therein, and remove all persons therefrom by summary proceedings or otherwise, anything herein contained to the contrary in anywise notwithstanding. But said Lessor shall be entitled at its election, instead of giving said notice, or terminating the lease as aforesaid for the breach of any covenant, to restrain by injunction such violation of the covenant.

And lessee covenants and agrees to and with Lessor as follows: That it, Lessee, shall and will during the term hereby demised well and truly pay unto Lessor the said rent hereby reserved at the times hereinbefore limited for the payment thereof, without deduction or delay.

And lessee further covenants and agrees that it, Lessee, shall and will during the whole of the demised term, and as additional rent for the demise and use of said premises, bear, pay and discharge all taxes and assessments of every nature and kind which may during such demised term be assessed, levied, confirmed or imposed upon said premises or any part thereof, expressly including any
162 unpaid taxes or assessments levied and imposed upon said demised premises for the year nineteen hundred and eighteen, and also all such taxes, rents or charges as shall during such demised term, be charged, levied or imposed for or on account of the use of water, gas or electricity upon the said demised premises, or any part thereof, whether such rents or charges constitute liens upon the real estate or not, and whether the same be ordinary or extraordinary, of any kind, nature or description whatsoever, whether imposed by the United States or State of Washington or by virtue of any municipal law or ordinance, and which the owner of said premises might in any event be required to pay, and also any and all other charges which may be levied, assessed or imposed, according to law, upon said demised premises, and that the payment of each and every tax and assessment, assessed, confirmed, levied or imposed upon such demised premises shall be made to the proper officers constituted by law to receive the same, within thirty days after the date when such payment shall have become so levied or due, and payable and that the receipts and vouchers evidencing such payments shall be delivered by Lessee to Lessor as vouchers

for such payments, said vouchers, however, to be returned to the Lessee after examination and comparison by the Lessor. And Lessee further covenants and agrees that if any such taxes, assessments, water or other charges shall not have been paid within the time hereinbefore provided for the payment thereof, the Lessor may pay the same, together with any interest or penalty that may have accrued thereon and the amount so paid by Lessor shall become due and payable by Lessee with the next installment of said rent which shall become due after such default on the part of Lessee. And summary or other legal proceedings for the recovery of the said premises may be enforced as much for such added rent, as for the rent reserved at such rent day by the terms of this lease.

And also that it, Lessee, shall not use said demised premises

163 or any part thereof, or permit or suffer the same to be used, for any purpose or in any manner contrary to law or to any municipal or state law, order, rule, ordinance or regulation; and Lessee shall, at Lessee's own expense, promptly execute and comply with all such rules, orders, ordinances and regulations of the Federal, State and City Governments and of any and all their Departments and Bureaus applicable to said premises, for the correction, prevention and abatement of nuisances or other grievances, or concerning any other matter in, upon or connected with said premises, whether of a nature ordinary or extraordinary, structural in character or otherwise, during said term, and shall also at Lessee's own expense promptly comply with and execute all rules, orders and regulations of the Fire underwriters, or other constituted authority, for the prevention of fires. Lessee shall have the right to take an appeal from any rule or order affecting the premises which is appealable, and in case of default by Lessee in the matter of any such law, order, rule, ordinance or regulation for a period of sixty days after notice thereof, or after a decision on the appeal where an appeal has been taken, Lessor may enter upon said premises and comply with and execute said rules, orders, etc., and the moneys expended by him because thereof, with interest thereon, shall become immediately due and payable to him from Lessee, and in case of default in repayment by Lessee, shall become added to and form part of the rent then due or next to become due hereunder and be collectible therewith. Nothing herein contained shall be construed to limit the obligation of Lessee under the provision of this clause.

Lessee further covenants and agrees with Lessor that it, Lessee, at Lessee's own proper cost and expense, shall and will within one year from the date of these presents fully complete or cause to be completed on the premises hereby demised certain alterations, additions, improvements and betterments, and add or cause to be added to the existing equipment at the demised premises such additional equipment as may be necessary or proper for the operation of the

164 plant as enlarged, all at a cost of not less than One million ($1,000,000.00) dollars. Lessee expressly agrees that such additions, improvements and betterments so made and the equip-

ment added shall immediately become part of the demised premises and subject to the existing mortgage liens upon the demised premises. If the alterations, additions, improvements and betterments completed and the equipment added within a period of one year from the date of these presents shall have cost less than One million ($1,000,000.00) dollars, Lessee covenants and agrees to pay Lessor in cash or in par value of bonds issued under either of said mortgages the difference between the actual cost and One million dollars ($1,000,000.00), with privilege to Lessee in lieu of said cash payment to pay said difference in Liberty bonds. The amount so paid to Lessor or said Bonds delivered to it instead of cash, shall be held by lessor, or at its election by the Trustee of the prior or junior mortgage covering the demised premises until such time as the said mortgage shall have been paid in full. When said mortgages shall have been fully paid, and not before, Lessor shall repay to Lessee the amount so received in cash or shall return the Liberty Bonds received, if said bonds shall have been delivered to Lessor instead of cash, as herein provided.

Lessee covenants and agrees to furnish Lessor from time to time a schedule of the alterations and additions, as and when completed, and a list of the equipment as and when such equipment is added to the plant, together with a statement showing the actual cost of said alterations and improvements and/or of said equipment. Lessee shall hold Lessor harmless against all mechanics' or other liens and all damage or other liability to which Lessor can or could be exposed or subjected, by reason of anything contained in this paragraph.

And Lessee shall and will at its own proper cost and expense keep the entire premises, exterior and interior, in good order and in repair and shall at all times during the demised terms carefully preserve and keep in thorough and good repair and working
165 condition all machinery and other equipment attached to or part of the demised premises, and all such repairs and maintenance shall be done to the satisfaction of Lessor at the expense of Lessee, and Lessee shall renew and replace from time to time such parts of existing equipment or equipment added in accordance with the provisions hereof as may be worn out, lost or destroyed from any cause whatsoever during the term, with new property of the same quality and character, to the end that the property subject to the provisions herein shall at all times during the demised term be undiminished in amount and value, except so far as it may be effected by orderly use or wear. All such renewals and replacements shall become part of the demised premises and shall be subject to the lien of the existing mortgages.

And lessee further covenants and agrees that it will at all times save Lessor harmless of and from all claim, liability, loss, damage, costs, costs and expenses by reason of any injury to persons or property, arising out of any and all activities connected with the operation of the demised premises or of any of the component parts thereof, or arising out of any act or omission of Lessee whatsoever, or by reason of the breach of any rules, ordinances or regulations of

the Police, Building, Fire, or other municipal department of the City of Seattle, during the term of this lease, and will, at Lessee's own expense defend any and all suits that may be brought against Lessor upon any such claim or claims and will satisfy, pay and discharge any and all judgments that may be recovered against said lessor in any such suit or suits.

And also that it, said Lessee, shall not, nor will at any time or times hereafter during the term hereby granted, assign, transfer or make over this present lease or in any way encumber this lease to any person or persons whomsoever, without the consent of Lessor in writing, for that purpose first had and obtained, said Lessee paying any expense thereof, anything hereinbefore contained to the
166 contrary thereof, in anywise notwithstanding, said consent not to be unreasonably withheld by Lessor.

No assignment or sublease by Lessee of all or any part of the term hereby demised shall operate to relieve Lessee of its liability for rent or the due performance of all the covenants and provisions hereof, and its liability as lessee shall continue during the term.

It is understood and agreed that Lessor does not desire or warrant the safety, suitability or tenantability of the demised premises; and Lessor shall not be responsible for any latent or other defects in the premises nor for any damage to the same or to goods or other things therein contained or stored, by any overflow or leakage upon or into the premises or for damage arising from any source whatever, and the rents shall not be withheld or diminished on account of such damage.

And it is further covenanted and agreed that in case the rent herein reserved, or any part thereof (including the taxes, assessments, water rents and insurance premiums herein agreed to be paid as additional rent by said Lessee, and also any other charges which may be levied, assessed or imposed, according to law, upon said demised premises as aforesaid) shall at any time be unpaid when due, or within thirty days thereafter, or the demised premises shall be abandoned or become vacant, or in case of the breach of any covenant or condition whatsoever herein contained on the part of the Lessee to be done, kept or performed, continuing for a period of thirty days after notice, or in case Lessee shall take the benefit of any insolvent act of the State of Washington, or shall be adjudicated a bankrupt or bankrupts under any bankruptcy law of the United States, then Lessor, at its option, shall have the power and the right to terminate and end this lease, and the term granted and all rights and interests under this lease by giving thirty days' notice in writing to Lessee whereupon this lease and said term and interest and
167 all right and claim under this lease shall cease and end, and Lessor shall be entitled to the immediate possession of said premises, and to take summary proceedings against the Lessee to recover possession of said premises.

And it is further covenanted and agreed by and between the parties hereto that in case the rent herein reserved, or any part thereof (including the taxes, assessments, water rents and insurance premiums herein agreed to be paid as additional rent by Lessee, and

also any other charges which may be levied, assessed or imposed according to law, upon said demised premises) shall be at any time unpaid when due, or within thirty days thereafter, or the demised premises shall become vacant, or in case of the breach of any covenant whatsoever herein contained on the part of the Lessee to be done, kept or performed, continuing for a period of thirty days after notice as aforesaid, then and thenceforth it shall be lawful for Lessor to reenter upon the said demised premises or any part thereof and the same to have again, repossess and enjoy, as in its first and former estate, anything herein contained to the contrary notwithstanding; or Lessor may, at its option, relet the said premises from time to time, as the agent of Lessee, in the name of either the Lessee or Lessor, collecting and applying the avails to repay the expenses of recovering possession and then to pay the rent reserved in this lease, rendering the overplus, if any, at the end of the term, to Lessee, who, however, shall in case of re-entry, and whether the premises are relet or otherwise, remain liable during said term, or renewed term, for a sum equal to the rent herein reserved and payable at the same period, less the avails of re-letting, if any.

Said Lessee agrees that it will keep the demised premises, both as to realty and personalty, insured against loss or damage by fire, for the benefit of Lessor, in insurable companies satisfactory to Lessor with a provision in the policy or policies of insurance, making the loss, if any, payable to Lessor. Said insurance shall be in the usual form and cover Lessor to the extent of the full insurable interest of the demised premises. Policies with receipts for premiums for the leased period shall be deposited with Lessor. In the event of any loss or damage by fire Lessee shall be entitled to receive the amount or amounts of insurance so made payable to Lessor and actually received by it under the policy or policies when and as the buildings or other property destroyed by fire have been fully rebuilt or otherwise fully restored or replaced by Lessee.

It is further agreed that in no case shall a waiver by Lessor of any right to take advantage of any breach of condition hereunder be a waiver of any other or further breaches, conditions and failures to perform, and Lessor covenants that Lessee, on paying said rent and performing the conditions and agreements aforesaid shall and may peacefully and quietly have, hold and enjoy the said demised premises for the term thereof. No surrender before the expiration of the demised term shall be valid unless accepted by Lessor in writing.

And also that all the provisions of this lease shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, or other successors in interest.

In witness whereof, the parties have caused these presents to be signed by their respective officers, and their seals affixed hereto.

In presence of

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION

By HOWARD COONLEY

Vice President

169 Attest
STEPHEN A. BOURNE

[SEAL.] SKINNER & EDDY CORPORATION.
By LOUIS TITUS
Attorney in Fact.

[SEAL.] SKINNER & EDDY CORPORATION.
D. E. SKINNER
President.

Attest
I. B. STEDMAN, *Secy.*

UNITED STATES OF AMERICA.
State of Pennsylvania,
County of Philadelphia, ss.

On this 17th day of June, A. D. 1918, before me personally appeared Howard Coonley, to me known to be the Vice President of the Corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that seal affixed is the corporate seal of said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

[SEAL.] ERVEY LYNDALL.
Notary Public.

Commission expires at close of next session of Senate.

STATE OF ——,
County of ——, ss.

On this 15th day of July, A. D. 1918, before me personally appeared D. E. Skinner, to me known to be the President of the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that seal affixed is the corporate seal of said corporation.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

[SEAL.] BENJ. K. DAVIS.
Notary Public for Washington
Residing at Seattle.

170 RELATOR'S EXHIBIT G-1.

Form 912—E. F. C.

District Northern Pacific

United States Shipping Board Emergency Fleet Corporation

Completion Order No. C. C. 3652

Date April 9 1919

To Skinner and Eddy

Please furnish labor and or material required to do work describe below on steamship West Maximus Hull No. 1188 charging same to United States Shipping Board Emergency Fleet Corporation at regular rates

For account of Ship Construction Division

Work to be done Dock vessel and apply one coat of approved anti-fouling paint to light water line

This is not a repair order as vessel has not been put into service No order involving a charge of over fifty dollars is valid unless approved by the District Manager No work will be paid for unless authorized by a written order and order number is quoted on voucher

EMERGENCY FLEET CORPORATION,
By D M CALLIS

Approved
W A MAGEE,
District Manager
(Original to Contractor)
(Copy)

171 RELATOR'S EXHIBIT G-2

Form 912-E. F. C.

District Northern Pacific

United States Shipping Board Emergency Fleet Corporation

Completion Order No. C. C. 3651

Date April 9 1919

To Skinner & Eddy Corporation

Please furnish labor and or material required to do work described below on Steamship Edgehill Hull No. 1734 charging same to United States Shipping Board Emergency Fleet Corporation at regular rates

For account of ship construction

Work to be done Dock vessel for inspection

This is not a repair order, as vessel has not been put into service. No order involving a charge of over fifty dollars is valid unless approved by the District Manager. No work will be paid for unless authorized by a written order and order number is quoted on voucher.

EMERGENCY FLEET CORPORATION.
By D M CALLIS

Approved
W A MAGEE,
District Manager.
Per CALLIS
(Original to Contractor.)

172 RELATOR'S EXHIBIT G-3

Form 912-E F C

District Northern Pacific

United States Shipping Board Emergency Fleet Corporation.

Completion Order No. C. O. 3657.

Date April 12, 1919.

To Skinner & Eddy Corporation

Please furnish labor and or material required to do work described below on Steamship Edgehill, Hull No. 1734, charging same to United States Shipping Board Emergency Fleet Corporation at regular rates.

For account of ship construction.

Work to be done: Remove and replace all defective riveting in bottom of hull.

This is not a repair order, as vessel has not been put into service. No order involving a charge of over fifty dollars is valid unless approved by the District Manager. No work will be paid for unless authorized by a written order and order number is quoted on voucher.

EMERGENCY FLEET CORPORATION.
By D M CALLIS

Approved
W A MAGEE,
District Manager.

(Original to Contractor.)
Copy.

173 RELATOR'S EXHIBIT G-4

Form 912—E. F. C.

District Northern Pacific

United States Shipping Board, Emergency Fleet Corporation.

Completion Order No. C. O. 3726.

Date April 22 1919.

To Skinner & Eddy Corp.

Please furnish labor and or material required to do work described below on steamship West Maximus, Hull No. 1188, charging same to United States Shipping Board Emergency Fleet Corporation at regular rates.

For account of Ship Const.

Work to be done: Remove and replace all defective riveting on bottom of hull.

This is not a repair order, as vessel has not been put into service. No order involving a charge of over fifty dollars is valid unless approved by the District Manager. No work will be paid for unless authorized by a written order and order number is quoted on voucher.

EMERGENCY FLEET CORPORATION.
By D. M. CALLIS
BEEBE.

Approved:
W. A. MAGEE,
District Manager.
(Original to Contractor.)

174 RELATOR'S EXHIBIT G-5.

Form 912—E. F. C.

District North Pacif

United States Shipping Board, Emergency Fleet Corporation.

Completion Order No. C. O. 3728.

Date April 25 '19

To Skinner & Eddy

Please furnish labor and or material required to do work described below on steamship Edgemont, Hull No. 1735, charging same to United States Shipping Board Emergency Fleet Corporation at regular rates.

For account of Ship Const.

Work to be done Dock vessel and apply one coat of approved anti-fouling paint to light water line.

This is not a repair order, as vessel has not been put into service. No order involving a charge of over fifty dollars is valid unless approved by the District Manager. No work will be paid for unless authorized by a written order and order number is quoted on voucher.

EMERGENCY FLEET CORPORATION.
By D M CALLIS
BEEBE

Approved
W A MAGEE,
District Manager

(Original to Contractor.)
(Copy.)

175 RELATOR'S EXHIBIT G-6

Form 912—E. F. C.

District Northern Pacific

United States Shipping Board, Emergency Fleet Corporation.

Completion Order No. C. O. 3729

Date April 26, '19

To Skinner & Eddy

Please furnish labor and or material required to do work described below on steamship Edgemont Hull No. 1735, charging same to United States Shipping Board Emergency Fleet Corporation at regular rates.

For account of Ship Const.

Work to be done Remove and replace all defective riveting on bottom of hull.

This is not a repair order, as vessel has not been put into service. No order involving a charge of over fifty dollars is valid unless approved by the District Manager. No work will be paid for unless authorized by a written order and order number is quoted on voucher.

EMERGENCY FLEET CORPORATION.
By D M CALLIS
BEEBE

Approved
W A MAGEE,
District Manager
(Original to Contractor.)

176 RELATOR'S EXHIBIT G-7

Form 912-E. F. C.
District N. P.

United States Shipping Board Emergency Fleet Corporation

Completion Order No. C. O. 4130

Date, 7-7-1

To Skinner & Eddy Corp.

Please furnish labor and or material required to do work scribed below on Steamship S. S. Ft. Wright, Hull No. 546, charg same to United States Shipping Board Emergency Fleet Corpo tion at regular rates.

For account of C. C. Moore, Engineers, Tacoma.

Work to be done: Install a by-pass in the deck steam reduc valve on hull 546, S. S. Ft. Wright.

This is not repair order, as vessel has not been put into serv No order involving a charge of over fifty dollars is valid unless proved by the District Manager. No work will be paid for un authorized by a written order and order number is quoted voucher.

EMERGENCY FLEET CORPORATION
By N. C. WILLEY

Approved:
R. L. DYER,
Asst. to District Manager.

(Original to Contractor.)

177 RELATOR'S EXHIBIT G-8

United States Shipping Board Emergency Fleet Corporation
Division of Construction, North Pacific District

Seattle, Washington, December 29, 1919

Skinner & Eddy Corporation,
Seattle, Washington.

GENTLEMEN:

Main Engine S. S. "Egremont."

1. Confirming verbal conversation of December 11th, please range to make the necessary repairs to the H. P. Engine, wh in general consist of shifting the forward crank web aft approximat 1/16", so that same will not rub after face of #1 Journal.

forward face of the crank pin brass also to be refaced, to give the usual clearance between the web and face of brass.

2. Kindly be governed by the above.

Very truly yours,

D. M. CALLIS,
District Manager.

(Signed) By WALT. B. BEEBE,
Assistant in Charge Ship Construction.

W. E. B. C.

178 RELATOR'S EXHIBIT H.

United States Shipping Board, Emergency Fleet Corporation, Philadelphia, Pa.

June 7, 1918.

General Order No. 38.

To: District officers, district supervisors, and district auditors for action.

To: Other executive officers for information.

Subject: Reimbursement to shipbuilders for increased labor cost—paying off workmen.

Supplementing General Order No. 36 on Reimbursement to Shipbuilders for Increased Cost of Labor.

A. *Authorization for Reimbursement.*

The decisions of the Labor Adjustment Board in certain shipbuilding districts provide that "employees shall be paid on the shipbuilder's time." In general, these rulings follow customs that existed in most of the districts prior to the time the decisions were rendered, in some cases the procedure having been regulated by existing state laws.

While the expense of paying off employees is appreciable as compared with the magnitude of the work on hand (particularly where, by proper systematizing of method, shipbuilders are able to pay off employees within 10 to 15 minutes per pay roll group) the Corporation will assume, as a maximum, the part of this cost hereinafter specified when claims for reimbursement are prepared in accordance with the following regulations.

179 B. *Claims for Reimbursement.*

Claims against the Corporation for reimbursement of shipbuilders on account of cost of paying off wage labor, engaged on ship construction for the Corporation, shall be limited to the cost of 15 minutes time per workmen per day period, and determined in accordance with the following, provided, however, that where any shipbuilder had been paying off his employees on his own time previous to the decision of the Labor Adjustment Board, no claim for reimbursement shall be accepted, nor payment made.

1. Divide number of wage workers on payroll, indirect as well as direct, by four, to obtain number of hours allowed for paying off, on a basis of a maximum of 15 minutes per employee per day period.

2. Multiply number of hours allowed for paying off by average base wage rate for direct and indirect wage labor in the shipyard, to obtain approximate cost of payoff time, exclusive of wage increases, bonuses, etc., for which claims for reimbursement shall be made separately.

3. Proportion of "2," equivalent to proportion of direct wage labor chargeable to Corporation work during period, will be the amount of paying off cost assumed by the Corporation.

Method of Preparing Claims for Reimbursement.

Claims for reimbursement to shipbuilders on account of expense incurred in paying off direct wage labor engaged on Corporation work must be made independently of any other claims for reimbursement and should cover a single pay period. All claims shall be made in accordance with the regulations included herein, shall be prepared on standard voucher forms of the Corporation, and must show on the face thereof or on supporting papers the following information:

1. Inclusive Dates of Pay Period Covered.

2. Certification by District Officer or District Supervisor and Audit Approval by the District Auditor.

3. Calculation of Amount Due, as outlined in Section B.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPORATION.
CHARLES PIEZ,
Vice President.

(Signed)

180 RELATOR'S EXHIBIT K.

Western Union Telegram.

By Philadelphia Penn 747P 18

Skinner and Eddy Corpn
Seattle Wash

You are hereby directed to immediately suspend all work upon twenty-five of the vessels covered by contracts three two four and four four seven. Stop. District Manager Blain will designate all numbers you will be guided accordingly. Stop. Order all work stopped on commitments made by you as to hulls designated by Blain and make no further commitments or expenditures as to them. Stop. Details follow by letter.

UNITED STATES SHIPPING BOARD EMERGENCY FLEET CORPN.
CHARLES PIEZ.
Director General.

RELATOR'S EXHIBIT K-2.

United States Shipping Board, Emergency Fleet Corporation,
Philadelphia, Pa.

April 25, 1919.

The Skinner & Eddy Corporation,
Seattle, Washington.

GENTLEMEN:

You are directed to proceed to cancel without delay all work on enty-five of the vessels covered by Contracts 324 and 447, on which uspension telegram was issued on February 18th, 1919, in connation of which telegram a letter was sent you on February 21, 9.

ou are also directed to suspend work upon and cancel all subcontracts covering the above named work.

You will please carry out these instructions with the understanding that such action on your part as to said subcontractors shall be without prejudice to your rights under your contracts with us, and we shall hold you harmless against any loss or expense, either direct or indirect, resulting from such action by you in canceling the contracts with subcontractors, including claims made by subcontractors on account of wholly or partly canceled orders, claims for attorneys' fees, or suits brought or threatened.

This agreement on our part is made, however, on condition that you will submit for our approval all settlements, commitments and liabilities before the same are made or acknowledged by you.

Very truly yours,

(Signed) CHARLES PIEZ,
Director General.

181 *Demurrer to Plea and Traverse.*

Filed January 28, 1927.

* * * * * * *

Now comes the respondent, J. R. McCarl, Comptroller General of the United States, an dsays that the petitioner's plea and traverse is bad in substance.

PEYTON GORDON,
United States Attorney.
JOHN M. LEWIS,
Attorneys for Respondent.

Note.

Among the points of law to be argued in favor of the foregoing demurrer are

1. That it affirmatively appears, from the said plea and traverse, that the claim of petitioner referred to therein is not such a claim as the respondent has jurisdiction to settle and adjust.

2. And for other defects apparent on the face of the record.

Order Sustaining Demurrer to Plea and Traverse.

Filed March 17, 1925.

* * * * * * *

This cause came on to be heard at this term upon the demurrer of the respondent, J. R. McCarl, Comptroller General of the United States to the plea and traverse of the relator, and thereupon, upon consideration thereof, it is by the court, this 17th day of March, 1925,

Ordered and adjudged that the said demurrer of the re-
182 spondent to the plea and traverse of the said relator be, and the same hereby is, sustained, and the relator having elected to stand on said plea and traverse, it is further

Ordered that the petition for mandamus filed herein be, and the same hereby is dismissed.

From the foregoing order the said relator, Skinner and Eddy Corporation, by its attorney, in open court, notes an appeal to the Court of Appeals of the District of Columbia, and the amount of the undertaking for costs on appeal is hereby fixed at one hundred dollars ($100.00), or in lieu thereof, the relator may deposit in the office of the clerk of this court the sum of Fifty Dollars in cash.

WENDELL P. STAFFORD
Justice.

O. K.
VERNON E. WEST
Asst. U. S. Attorney.

Memorandum.

March 17, 1925.—$50 deposited in lieu of bond on appeal.

183 *Assignments of Error.*

Filed March 17, 1925.

* * * * * * *

The relator, Skinner and Eddy Corporation, assigns the following as errors committed by the court in the above-entitled cause, namely:

1. The court erred in overruling relator's demurrer to the answer of respondent.

2. The court erred in sustaining the demurrer of respondent to relator's plea and traverse and in dismissing relator's petition for writ of mandamus.

3. The court erred in holding that the respondent did not have jurisdiction to pass on the claims presented to him by relator on September 4, 1924.

4. The court erred in refusing to issue a writ of mandamus to the respondent requiring him to consider and act upon the claims of relator presented to the said respondent on September 4, 1924.

J. BARRETT CARTER,
GEO. V. TRIPLETT, JR.,
Attorneys for Relator.

Service of a copy of the foregoing assignments of error acknowledged this 17th day of March, 1925.

VERNON E. WEST,
Ass't U. S. Attorney, Attorney for Respondent.

184 *Designation of Record.*

Filed March 17, 1925.

* * * * * * *

The Clerk of the Court will please include in the record on appeal to the Court of Appeals in the above-entitled cause the following:

1. Original petition for writ of mandamus, with all exhibits thereto attached.

2. The answer of respondent to said petition, together with the exhibits thereto attached.

3. The demurrer of the relator, Skinner and Eddy Corporation, to the answer of the respondent.

4. The order of court dated January 6, 1925, overruling said demurrer.

5. The plea and traverse of relator to the answer of respondent, with the exhibits thereto attached.

6. The demurrer of the respondent to said plea and traverse.

7. The order of court entered herein on the 17th day of March, 1925, sustaining said demurrer and dismissing relator's petition.

8. Notation of appeal in open court.

9. Notation of deposit of money in lieu of bond on appeal, with the Clerk of the Supreme Court of the District of Columbia.

10. Assignment of errors.

11. This designation.

J. BARRETT CARTER,
GEO. V. TRIPLETT, JR.,
Attorneys for Relator.

185 Service of a copy of the foregoing designation of record acknowledged this 17th day of March, 1925.

VERNON E. WEST,
Ass't U. S. Attorney, Attorney for Respondent.

186 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 185, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 69405 at Law, wherein United States of America, ex relatione Skinner and Eddy Corporation, a Corporation, is Petitioner and J. R. McCarl, Comptroller General of the United States is Respondent, as the said remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 15th day of June, 1925.

(Seal of the Supreme Court of the District of Columbia.)

MORGAN H. BEACH,
Clerk.

EW

Endorsed on cover: District of Columbia Supreme Court. No. 4345. United States of America ex relatione Skinner and Eddy Corporation, a corp., appellant, vs. J. R. McCarl, Comptroller General of the United States. Court of Appeals, District of Columbia. Filed Jun. 17, 1925. Henry W. Hodges, clerk.

Petition for rehearing, covering 13 pages, filed November 17, 1925, omitted from this print. It was denied and nothing more by order November 21, 1925.

Minute entry of argument of cause omitted in printing.

IN COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

(Before Martin, Chief Justice, and Robb and Van Orsdel, Associate Justices)

OPINION

Mr. Justice ROBB delivered the opinion of the Court:

Appeal from a judgment dismissing a petition for mandamus to compel appellee to pass upon a claim of appellant growing out of contracts between the U. S. Shipping Board Emergency Fleet Corporation and the Skinner and Eddy Corporation.

There now is pending in the U. S. District Court for the Western District of Washington a suit instituted by the Skinner & Eddy Corporation against the Emergency Fleet Corporation and based upon the above contracts.

The Emergency Fleet Corporation made what purported to be a general assignment to the United States. Thereupon the United States as assignee, instituted suit in the U. S. District Court for the Western District of Washington on claims growing out of the same contracts involved in the suit filed by the Skinner & Eddy Corporation.

Prior to the assignment of these contracts to the United States, the Comptroller General had ruled that claims thereunder by the Skinner & Eddy Corporation were not claims against the United States but claims against the Emergency Fleet Corporation. After the assignment by the Emergency Fleet Corporation, and as stated by the Skinner & Eddy Corporation in anticipation of the bringing of the suit which the United States subsequently filed, the jurisdiction of the Comptroller General again was sought to be invoked, and denied.

Appellant maintains that the status of the Emergency Fleet Corporation has been definitely determined by the Supreme Court of the United States to be that of a private business corporation having a distinct entity and not entitled to the immunity of the sovereign, and hence that it may be sued as any other private corporation for its torts or upon its contracts. In support of this contention are cited U. S. vs. Strang, 254 U. S. 491, and Sloan Shipyard Corp. vs. U. S. E. F. C., 258 U. S. 549. Those decisions apparently fully sustain this contention. Appellant further contends that the assignment of these contracts to the United States has no greater efficacy than the assignment to an individual, and cites U. S. vs. Buford, 3 Pet. 12, 30. Certainly this is the general rule. In 5 C. J. 936 it is said: "So the assignee takes the chose subject to all equities and defenses between the assignor and the debtor existing at the time of the assignment, to all counterclaims against the assignor then held by the debtor, and to arrangements made between the debtor and the assignor prior to the time when the debtor receives notice of the assignment." See, also, The Siren, 7 Wall. 152, 154, and Rolling Mill Co. vs. Ore & Steel Co., 152 U. S. 596. Under the view we take of the case, however, it is unnecessary to determine these questions.

It is manifest that there are pending in a court of competent jurisdiction two suits involving the contracts upon which the claims submitted to the Comptroller General are based. If, as suggested by appellant, that court should be of opinion that the assignment to the United States was subject to all existing equities and that the claim here involved is not in law a claim against the United States, notwithstanding the assignment, then there would be no necessity for the writ. But, whatever may be the decision of that court, it having acquired jurisdiction of the subject matter of this case, no court of co ordinate authority is at liberty to interfere with its action. This principle is so familiar as to require no citation of authorities.

It results that the judgment below was right and must be affirmed.

Affirmed.

In Court of Appeals of District of Columbia

[Title omitted]

Appeal from the Supreme Court of the District of Columiba

Judgment—November 2, 1925

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said Supreme Court in this cause be, and the same is hereby, affirmed with costs.

Per Mr. Justice Robb.

In Court of Appeals of District of Columbia

[Title omitted]

Order Denying Motion for Rehearing—November 21, 1925

On consideration of the motion for a rehearing in the above entitled cause, it is ordered by the Court that said motion be and the same is hereby denied.

Clerk's certificate to foregoing papers omitted in printing.

In Supreme Court of the United States

Order Allowing Certiorari—Filed January 18, 1926

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 31,570. District of Columbia Court of Appeals. Term No. 847. The United States ex rel. Skinner and Eddy Corporation, petitioner, vs. J. R. McCarl, Comptroller General of the United States. Petition for writ of certiorari and exhibit thereto, with notice of filing and proof of service of petition, brief, and record. Filed December 18th, 1925. File No. 31,570.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1925

No. [redacted]57 30

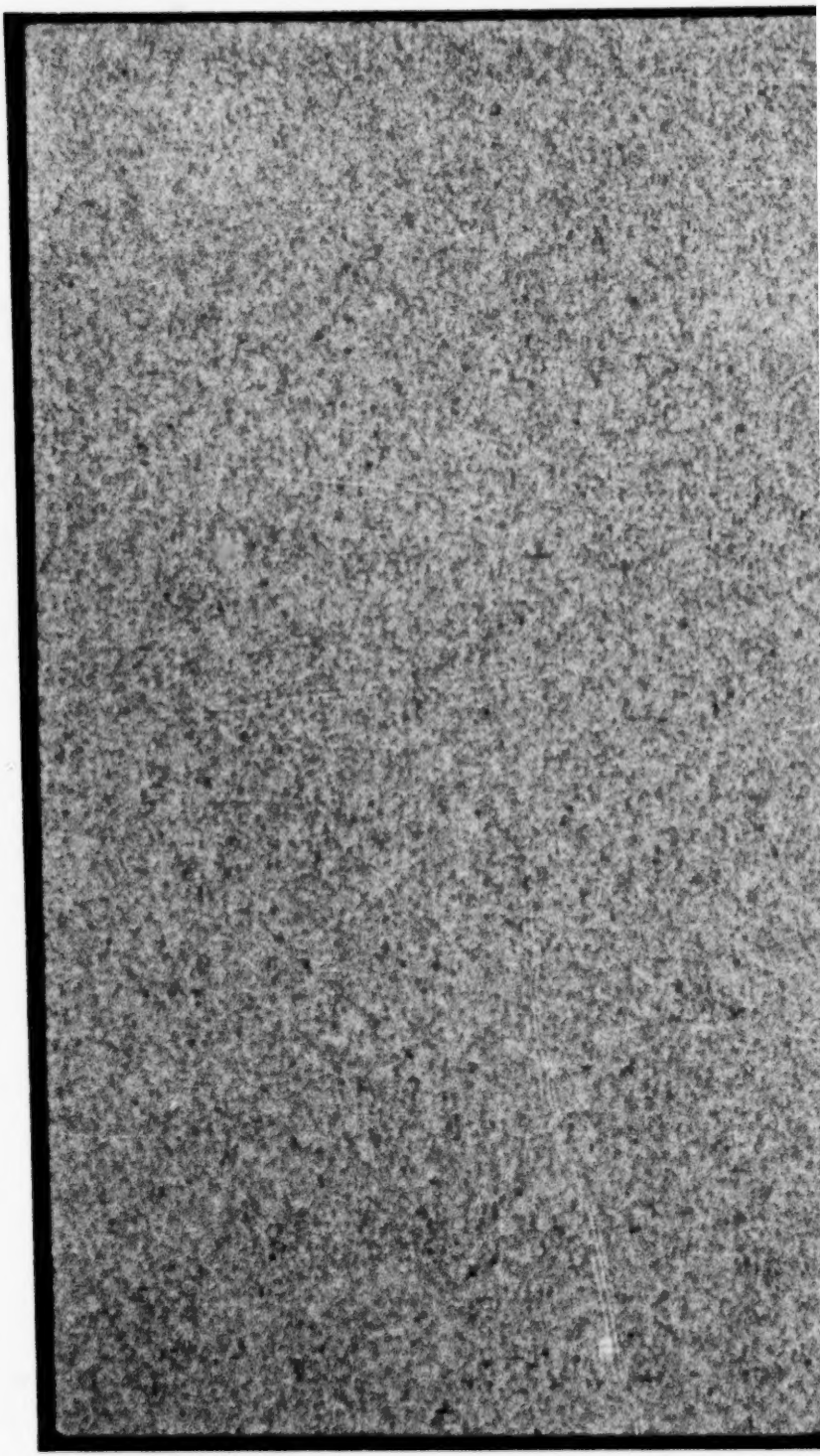
UNITED STATES *ex Relatione*
SKINNER AND EDDY CORPORATION, A Corporation
Petitioner

vs.

J. R. McCARL, COMPTROLLER GENERAL
OF THE UNITED STATES
Respondent

Petition for Writ of Certiorari to the Court of Appeals
of the District of Columbia and Brief
in Support Thereof

LOUIS TITUS,
J. BARRETT CARTER,
Attorneys for Petitioner



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1925

UNITED STATES *Ex Relatione* SKINNER AND EDDY CORPORATION, A CORPORATION,
Petitioner,

vs.

J. R. McCARL, COMPTROLLER GENERAL OF THE UNITED STATES,
Respondent.

NOTICE OF FILING

To The Solicitor General of the United States:

Please take notice that on the ———— day of December, 1925, we caused to be filed in the Clerk's Office of the Supreme Court of the United States a petition for a writ of certiorari in the above entitled cause, and we hand you herewith a copy of said petition with the brief accompanying the same, and of the record in

the case, including the proceedings in the Court of Appeals of the District of Columbia.

Dated December ———, 1925.

Attorneys for Petitioner

Service of the foregoing notice, together with copy of the petition and brief in support thereof and the record filed in the Clerk's Office of the Supreme Court of the United States, is hereby admitted, this ——— day of December, 1925.

Solicitor General of the United States.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1925

UNITED STATES *Ex Relatione* SKINNER AND EDDY CORPORATION, A CORPORATION,
Petitioner,

VS.

J. R. MCCARL, COMPTROLLER GENERAL OF THE UNITED STATES,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF.

PETITION

To the Honorable, the Supreme Court of the United States:

The petition of the United States *ex relatione* Skinner and Eddy Corporation, a corporation, respectfully shows:

Your petitioner prays for a writ of certiorari to review a final judgment of the Court of Appeals of the District of Columbia rendered in this case on November 2, 1925, and a rehearing denied November 21, 1925, affirming a judgment of the Supreme Court of the District of Columbia dismissing a petition of relator (who is hereinafter called the petitioner) for a writ of mandamus directed to the respondent ordering respondent to consider and pass upon a claim which had been presented to him by petitioner.

PROCEEDINGS IN THE COURTS BELOW

A petition was filed in the Supreme Court of the District of Columbia by petitioner for a writ of mandamus ordering respondent to consider and pass on a claim petitioner had filed with him (R. 1). An answer to this petition was filed by respondent (R. 11). Petitioner demurred to this answer and the demurrer was overruled (R. 17, 18). Thereupon petitioner filed a traverse and plea to the answer (R. 19). Respondent filed a demurrer to this traverse and plea, which demurrer was sustained and the petition dismissed (R. 119, 120). Petitioner appealed to the Court of Appeals of the District of Columbia, and the latter court affirmed the judgment of the Supreme Court of the District of Columbia, and the decision of the Court of Appeals of the District of Columbia is therefore a final decision (R. 123).

FACTS

(1) From May 28, 1917, to December 29, 1919, petitioner entered into eighteen contracts or supple-

mental contracts with the United States Shipping Board Emergency Fleet Corporation. Five of the principal contracts were for the construction of ships by petitioner for said Fleet Corporation (R. 23, 42, 58, 72, 88); one contract was for the sale by the Fleet Corporation to the petitioner of a shipbuilding plant at Seattle (R. 54); and eight of these contracts were for repairs to vessels, which repairs petitioner agreed to make and for which repairs the Fleet Corporation agreed to pay (R. 112-116). On April 25, 1919, all work on twenty-five ships to be constructed under two of the contracts were cancelled by the Fleet Corporation (R. 119).

Differences arose between the petitioner and the Fleet Corporation growing out of the said several transactions, and on December 28, 1920, petitioner filed with the Auditor for the State and Other Departments a claim against the United States growing out of these contracts. The Auditor, regarding said claim as one against the Fleet Corporation, transmitted it to the Fleet Corporation and took no further action thereon (R. 6).

In the meantime, and on the theory that the contracts under which the claim arose were contracts of the United States, suit had been filed by petitioner in the United States Court of Claims on substantially the same claim presented to the Auditor.

Thereafter (and after it had been determined by this court in the case of the *Sloan Shipyard Corporation vs. United States Shipping Board Emergency Fleet*

Corporation, and allied cases, 258 U. S. 549, that similar contracts were Fleet Corporation contracts and not contracts of the United States) the suit in the Court of Claims was dismissed by petitioner without prejudice, before any action had been taken thereon by that court. (R. 19.)

On May 1, 1923, immediately after the suit was dismissed in the Court of Claims, suit was filed by petitioner in the State Court at Seattle, Washington, against the Fleet Corporation, for $9,129,401.14, exclusive of all credits and counter-claims, the suit being founded on the same contracts between petitioner and the Fleet Corporation that were the basis of the suit in the Court of Claims. This suit was removed by the Fleet Corporation to the United States District Court for the Western District of Washington, and the United States attorney for that District appeared in said cause by direction of the Attorney General of the United States and filed a motion to dismiss on the ground, among others, that the suit was a claim against the United States. That motion is still pending and undisposed of (R. 3).

On April 16, 1923, the Fleet Corporation made an assignment to the United States of

> "all the goods, chattels, bonds secured by mortgages, bonds, notes, shares of stock, contracts, securities, claims, personal property, and choses in action, including accounts against divers persons for the payment of money, and all personal property of every kind and description whatsoever wherever the same may be situated." (R. 4.)

It is alleged in the petition filed by petitioner in the Supreme Court of the District of Columbia, and admitted as true by demurrer, that the United States, by virtue of the said assignment, asserts a claim against petitioner growing out of the contracts hereinbefore referred to, and that the United States, through its attorneys and agents, is now in active preparation to file suit against petitioner on such claim, and that such suit will be filed within the near future (R. 4).

In anticipation of the filing of suit by the United States on said assigned claim, petitioner on September 4, 1924, in order to take advantage of and to comply with the provisions of Section 951 of the United States Revised Statutes (the material parts of which are quoted in the margin)* filed with the respondent a claim against the United States, the claim being based on the same contracts between the Fleet Corporation and petitioner hereinbefore referred to. The respondent refused to act on the claim until after the conclusion of the suit filed by petitioner at Seattle, Washington, against the Fleet Corporation (R. 6), but when the instant case came on for hearing in the Supreme Court of the District of Columbia, the attorney for the respondent stated in open court (as appears from the order of the court overruling the demurrer, R. 18) that the answer filed by the respondent should be con-

*"Section 951. In suits brought by the United States against individuals, no claim for a credit shall be admitted, upon trial, except such as appear to have been presented to the accounting officers of the Treasury, for their examination, and to have been by them disallowed, in whole or in part. * * *."

sidered as a denial of jurisdiction on the part of respondent to consider the claim at all.

When the United States files suit against petitioner on the claim assigned to it by the Fleet Corporation, the suit will be filed in the United States District Court for the Western District of Washington, and the Judge presiding in that court held on February 8, 1924, in the case of *United States* vs. *Fisher Flouring Mills Co.*, 295 Fed. 691, that in a suit brought by the United States on a cause of action assigned to it by the Fleet Corporation, the defendant, by reason of the provisions of Section 951, R. S., could not plead a set-off, credit, or counter-claim, unless it had been first presented to the Accounting Officers of the Treasury and disallowed. (R. 11).

(2) In addition to the foregoing facts, which appear in the record, it was orally stated by counsel for respondent at the hearing in the Court of Appeals and conceded by counsel for petitioner to be a fact, that after the filing of the petition for mandamus in this case the United States actually commenced a suit against petitioner upon these contracts. In said suit the assignment from the Fleet Corporation to the United States is not pleaded, but it is alleged in the complaint that said contracts are United States contracts, and that the claim against petitioner is a direct claim of the United States. This is referred to only for the reason that the decision of the Court of Appeals appears to be based largely upon such statement.

QUESTIONS OF LAW PRESENTED

The foregoing summarized statement of the facts raises five questions of law as follows:

(1) Whether the court can, in a proper case, compel the Comptroller General of the United States to pass upon a claim presented to him?

(2) Whether the Comptroller General of the United States can refuse to pass upon a claim duly presented and thus deprive the defendant in a suit by the United States of the right to prove a set-off or credit to such suit, which right is granted the defendant by Section 951, R. S.

(3) Whether it is too late for the Comptroller General to pass upon such claimed credit after suit has been filed by the United States.

(4) Has the Merchant Marine Act of June 5, 1920, 41 Stat. L. 988, amended Section 951, R. S., so that in a suit by the United States against a defendant arising out of contracts made between such defendant and the Fleet Corporation, such defendant can prove at the trial his credits growing out of the same contracts without showing a presentation thereof to, and action thereon by, the Comptroller General, or has said Merchant Marine Act in any way deprived such a defendant of the right to establish a credit as provided in Section 951, R. S.?

(5) When the United States sues a defendant upon a claim assigned to it, can defendant prove at the trial of such suit credits arising out of the same contracts

upon which the suit is brought without showing a compliance with Section 951, R. S.?

REASONS WHY PETITION SHOULD BE GRANTED

I

The Court of Appeals of the District of Columbia has decided a question of substance relating to the construction of Section 951, R. S., to the effect, that where the United States has already commenced a suit the Comptroller General cannot be ordered to act upon a credit claimed by defendant in such suit for the reason that such order would be an unwarranted interference with the action of the court in which such suit is pending. In making this decision the Court of Appeals of the District of Columbia did not give proper effect to an applicable decision of this court, to-wit, the case of *United States* vs. *Hawkins*, 10 Pet. 125.

II

The Court of Appeals of the District of Columbia has decided a question of general importance which has not been but should be settled by this court of last resort. The effect of the decision of the Court of Appeals is that the Comptroller General cannot be mandamused to act upon a claimed credit to a suit threatened by the United States upon a claim assigned to the United States by the Fleet Corporation, where the claimed credit grows out of the transaction upon which the suit is based. This decision was made notwithstanding the

provisions of Section 951, R. S., which apparently prohibit the allowance of a credit at the trial unless such credit has been presented to the accounting officers of the Treasury and disallowed in whole or in part.

WHEREFORE, your petitioner respectfully prays for the allowance of a writ of certiorari to the Court of Appeals of the District of Columbia, commanding the said court to certify and send to this court a full and complete transcript of the record and all proceedings of the Court of Appeals of the District of Columbia had in this cause, to the end that this cause may be reviewed and determined in this court as provided in the Judicial Code, Section 240; and that your petitioner may have such other or further relief or remedy in the premises as to this court may seem appropriate and in conformity with law, and that the said judgment of the Court of Appeals of the District of Columbia in this case, and every part thereof, may be reversed by this Honorable Court.

LOUIS TITUS,
J. BARRETT CARTER,
Attorneys for Petitioners.

We, the undersigned, attorneys for the petitioner, hereby certify that in our opinion the foregoing petition is meritorious, and well founded in law, and that it is not submitted for the purpose of delay.

LOUIS TITUS,
J. BARRETT CARTER,
Attorneys for Petitioner.

BRIEF IN SUPPORT OF PETITION

POINT I

The right of the court to compel the Comptroller General of the United States, by mandamus, to act in a proper case.

The right of the court to compel the Comptroller General of the United States to proceed to the determination of a claim presented to him, when he arbitrarily refuses to take any action is no longer an open question. This court, in the case of *Work, Sec'y of Int.* vs. *Rives*, decided March 2, 1925, No. 272, has gone quite fully into the powers of the court to compel a public officer by a writ of mandamus to act, and we believe it unnecessary to cite further authorities on this question.

POINT II

Unless the Comptroller General acts on the claim presented, Section 951 of the Revised Statutes may bar petitioner from proving its legitimate credits in the suit which the United States has already commenced as well as in the suit which it threatens to commence.

(1) The record shows that the United States is threatening a suit against the petitioner on claims arising out of the contracts made between petitioner and the Fleet Corporation, which claims were assigned to

the United States by the Fleet Corporation. The oral statements of counsel for both parties at the hearing in the Court of Appeals (referred to in this brief solely because such statements apparently furnished the basis for the decision of the Court of Appeals (R. 124), show that the United States, after the filing of the petition for mandamus by the petitioner in the Supreme Court of the District of Columbia and before the hearing on appeal in the Appellate Court, had actually commenced a suit against the petitioner upon these contracts. Such suit, however, is not based upon the assigned claim but is a direct suit by the United States upon the theory that the contracts are United States contracts, and that the United States can directly maintain a suit thereon.

(2) The right of set-off did not exist at common law, but such right is granted defendant in suits by the United States by Section 951, R. S.

Watkins vs. *United States*, 9 Wall. 759.

The right thus granted extends to all credits or set-offs, whether legal or equitable or whether arising out of the same transaction on which suit is brought or otherwise.

United States vs. *Wilkins*, 6 Wheat. 135.

In so far as it is pertinent to this controversy, Section 951 of the Revised Statutes is as follows:

> "In suits brought by the United States against individuals, no claim for a credit shall be admitted, upon trial, except such as appear to have been

presented to the accounting officers of the Treasury, for their examination, and to have been by them disallowed, in whole or in part, * * *."

Under this statute it is not only necessary for the defendant in a suit against the United States to present a credit to the accounting officer of the Treasury, but such credit must be disallowed in whole or in part before such credit can be admitted upon trial.

United States v. Giles, 9 Cranch 212.
Watkins v. United States, 9 Wall. 759.
United States v. Wilkins, 6 Wheat. 135.
Smythe v. United States, 188 U. S. 156, 173.

(3) Inasmuch as the disallowance of the claim is as much a prerequisite to the admission of the credit as the presentation, it would seem to follow, therefore, that unless Section 951 has been repealed or amended (which will be hereinafter considered), the petitioner will be in danger of being barred from proving its credits in the suit already brought as well as in the suit which is threatened, unless the Comptroller General can be compelled to act upon the claim for credits which has been duly presented to him.

POINT III

Writ of Mandamus compelling Comptroller General to act would be properly granted even after suit has been commenced by the United States, and such writ does not constitute any interference with the court in which such suit is pending.

The Court of Appeals based its decision upon the proposition that to order the Comptroller General to

take action upon the claim presented would be to interfere with the United States District Court at Seattle, where the cases involving the contracts are now pending (R. 124). This would seem to be a misconception of the result of a mandate requiring the Comptroller General to act.

The Writ requested would simply require the Comptroller General to take action upon the claim presented to him. Such writ is not directed to the District Court at Seattle, and it is apparent that it could not interfere with any action that the Seattle Court might choose to take. If the Comptroller General acts, he must either allow or disallow the claim in whole or in part. If he disallows the claim, the Court manifestly would not be interfered with for the whole case would be left to its determination, but in that event, the defendant would have put itself in a position where it would have the opportunity of proving, if it could, the credits which the Comptroller General had disallowed. If, on the other hand, the Comptroller General allowed the claim, such action would not interfere with the Court, for the reason that such action would be merely an admission by the United States, through its properly authorized officer, that the amounts allowed were due. A plaintiff in an action can always admit, if he chooses, that defendant is entitled to certain credits, and such admission does not constitute an interference with the Court before which the case is pending. It is manifest, therefore, that to order the Comptroller General to act would be no interference with the Seattle Court.

In the case of *United States* vs. *Hawkins*, 10 Pet. 125, certain credits in favor of one of the defendants had been offered at the trial. The Attorney General, relying on Section 951, R. S., objected to the consideration of these credits upon the ground (see page 128):

> "It did not appear that the documents to sustain them had been presented to the proper officers of the Treasury before the commencemnt of this suit."

In its decision on this point, this Court said (page 131 of opinion):

> "In regard to so much of the exception which objects to the introduction of the bills, orders or documents claimed as credits in the defendants' supplemental answer—because they had not been presented to the proper Accounting Officers, and disallowed *previous to the commencement of the suit*—we remark, it has never been the practice of the Circuit Court in suits under the law of the 3d March, 1797 (Sec. 951, Rev. Stat.) to deny to defendants a claim for credits against the United States, because they had not been presented and disallowed, before the commencement of the suit. The practice to allow a claim for credits, *after the suit has been commenced*, is sustained by the spirit and letter of the third and fourth sections of the statute.
>
> • • • • • •
>
> He (defendant) may have them submitted to a jury, at the trial, if they have been refused by the

Accounting Officers of the Treasury after the suit has been instituted." (Italics ours.)

Here is a direct holding by this Court that the Accounting Officers of the Treasury should pass upon a claim, even if presented after a suit covering the same subject had been filed. It is apparent that the Court of Appeals failed to give proper effect to this decision.

POINT IV

Section 951, R. S., has not been repealed or amended, and Comptroller General is proper official to whom should be presented all claims which are presented as credits to a suit by the United States.

(1) It was contended on behalf of respondent in the lower courts that respondent had no jurisdiction to pass upon the claim presented because the claim grew out of contracts between the Fleet Corporation and petitioner, and that the Act of June 5, 1920 (the Merchant Marine Act, 41 Stat. L. 988-989), gave the Shipping Board exclusive jurisdiction of such claims. The Supreme Court of the District of Columbia apparently based its decision upon this ground (R. 18). The provision of the Act of June 5, 1920, relied upon by respondent, is as follows:

"(c) As soon as practicable after the passage of this Act, the Board shall adjust, settle, and liquidate all matter arising out of or incident to the exercise by or through the President of any of the powers or duties conferred or imposed upon

the President by any such Act or parts of Acts; and for this purpose the board, instead of the President, shall have and exercise any of such powers and duties relating to the determination and payment of just compensation."

For the purpose of this argument we may grant that the above quoted provision from the Merchant Marine Act gives the Shipping Board full authority where it is possible, to adjust, settle and liquidate all claims arising out of Fleet Corporation contracts. But in this case the Board, for some reason undisclosed by the record, has been unable to effect a settlement and has been unable to adjust and liquidate the claim, and the United States has actually commenced or is threatening a suit thereon. Section 2, sub-division (b), Subparagraph (2) of the Merchant Marine Act is as follows:

> "All rights, interests, or remedies accruing or to accrue as a result of any such contract or agreement or of any action taken in pursuance of any such Act or parts of Acts shall be in all respects as valid, and may be exercised and enforced in like manner, subject to the provisions of subdivision (c) of this section, as if this Act had not been passed."

It seems clear, therefore, that there was no intent on the part of Congress to deprive any person who had contracts with the Fleet Corporation of any rights or remedies which such person might have with respect to said contracts. What sub-division (c), previously quoted, really means, therefore, is that the Shipping Board is given the authority to make settlements where

possible, which authority it would not otherwise have had.

(2) It must be remembered that it is Section 951, R. S., that gives a defendant in suits by the United States a right to a set off, and that except for this statute, no such right would exist. It is not to be presumed that Congress, in passing the Merchant Marine Act, intended to deprive a defendant of this right in cases where the United States sued upon Fleet Corporation contracts.

(3) The position of respondent, then, seems to be that the Act of June 5, 1920, amended Section 951, so that in suits by the United States upon Fleet Corporation contracts, a claim for credit must have been presented to and disallowed by the Shipping Board, instead of the Comptroller General, before such credit can be admitted at the trial. To read into the Merchant Marine Act such an amendment to Section 951 is an extraordinary and unwarranted construction of that Act.

It is true that in the case of *United States* vs. *Kimball* 101 U. S. 726, this Court held that a presentation of the claim involved in that case to the Commissioner of Internal Revenue was a compliance with Section 951. The decision of the Court was merely to the effect that where the United States had sued a Collector of Internal Revenue, a presentation of a credit to the Commissioner of Internal Revenue and a rejection by that officer of such credit, was a presentation to and rejection by the "accounting officers of the Treasury."

The Commissioner of Internal Revenue is an officer of the Treasury, and was held in that case to be an accounting officer of the Treasury, but that is far from holding that the Shipping Board, which is an independent establishment of the United States, is an accounting officer of the Treasury.

The Act of June 10, 1921 (42 Stat. L. 23-27), confers upon the Comptroller General "all powers and duties now conferred or imposed by law upon the Comptroller of the Treasury or the six auditors of the Treasury Department," and Section 236 of the Revised Statutes was amended to read as follows:

> "All claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the Government of the United States is concerned either as debtor or creditor, shall be settled and adjusted in the General Accounting Office."

The same act provides that the General Accounting Office shall be under the control and direction of the Comptroller General of the United States.

It is therefore clear that it is the duty of the Comptroller General, under Section 951, to pass upon the claim which petitioner presented to him.

There is no conflict of jurisdiction between the Comptroller General and the Shipping Board. The Merchant Marine Act gives the Shipping Board the power to make settlements, if it can, of certain controversies. But where a settlement is not made and a suit commenced or threatened by the United States, then the

Comptroller General is the official to whom must be presented all claims for credit in such suit.

POINT V

Section 951 applies where the United States sues on an assigned claim and credits claimed grow out of original transaction.

Counsel for petitioner are firmly of the impression that this court has held that contracts such as those involved in this case between petitioner and the Fleet Corporation are Fleet Corporation contracts and not not contracts of the United States. (See *Sloan Shipwards Corporation* vs. *United States Shipping Board Emergency Fleet Corporation* and allied cases, 258 U. S. 549.) This has been the interpretation placed upon this decision by the Circuit Court of Appeals of the Second Circuit in the case of *Providence Engineering Corp.* vs. *Downey Shipbuilding Corp.*, 294 Fed. 641, by the Circuit Court of Appeals of the Ninth Circuit in the case of *United States* vs. *Matthews*, 282 Fed. 266, and by the Circuit Court of Appeals for the Third Circuit in the case of *United States Shipping Board* vs. *Banque Russo Asiatique*, 286 Fed. 918.

The record shows that whatever claims the Fleet Corporation has against the petitioner on account of these contracts has been assigned to the United States, and that the United States is threatening a suit thereon. The claims for credit which the petitioner has against his threatened suit arise out of the original contracts and transactions, and therefore would be proper

claims for credit in the event the Fleet Corporation itself brought suit, and could be pleaded and proved in such a suit without hindrance.

Under these circumstances, Section 951, R. S., would seem to be applicable. The language of Section 951 is "in suits brought by the United States." This language is broad enough to include all suits. There is no exception made in the case of a suit upon an assigned claim, and it would therefore seem to follow that Section 951 applies where the United States sues upon an assigned claim as well as where it sues upon a direct claim, and it was so held by the United States District Court for the Western District of Washington in the case of *United States* vs. *Fisher Flouring Mills Company*, 295 Fed. 691.

The situation thus presented is that had the Fleet Corporation brought suit against petitioner upon these contracts petitioner could have set up and proved its credits, but the assignment by the Fleet Corporation to the United States and the refusal of the Comptroller General to act places petitioner in a position where it is in grave danger of losing its rights to establish such credits through no fault of its own.

POINT VI

Suit already commenced by the United States is not on assigned claim but on direct claim, and Section 951 is clearly applicable.

If the action is properly brought by the United States directly, without pleading an assignment, then

necessarily the credits growing out of the same contracts are credits against the United States, and the Comptroller General should be compelled to act. This would be in accordance with the decision of the Supreme Court in the case of *United States* vs. *Hawkins*, *supra*, where the then Accounting Officers of the Treasury did act after suit commenced, and such act was approved by the Supreme Court.

It must be apparent, however, that there is a danger that the attorneys for the United States may at any moment change their mind and, as the statute of limitations never runs against the United States, file a new suit, pleading the assignment. In fact, the record in this case shows that such suit is actually threatened (R. 4).

CONCLUSION

Decision of lower court imposes extreme hardship upon petitioner.

The decision of the lower court leaves the petitioner in an extraordinarily awkward position. The United States has commenced suit upon these contracts in the United States District Court at Seattle. The petitioner here, who is the defendant in the Seattle suit, has what it considers to be perfectly legitimate credits in large amounts growing out of the original transaction. The same United States District Court before which the suit against the petitioner is now pending, has held in the case of *United States* vs. *Fisher Flouring Mills Company*, *supra*, that in such a suit by the United

States the defendant cannot be allowed any credits un
less Section 951 be complied with. The appellant ha
done everything it can do to comply with the condition
of Section 951. It first presented its claim to the Audi
tor for State and Other Departments, who at that tim
was the proper accounting officer of the Treasury, an
that officer refused to pass upon the claim. After th
Comptroller General superseded the Accounting Offi
cers of the Treasury, the claim was again presented t
the Comptroller General, and that officer refused t
pass upon the claim.

Section 951 says that no credit can be allowed in sui
by the United States unless such claim has been pre
sented and disallowed by such officer. Consequently
unless this Court grants this petition, there is grav
danger that the Seattle Court may hold petitione
barred, despite its utmost diligence, from proving it
proper claim for credit.

We submit that the United States should not be per
mitted to deprive a defendant of the right given b
statute, to prove a credit, through the refusal of on
of its own officers to act upon a properly presente
claim, and that therefore the writ of certiorari shoul
be granted.

Respectfully submitted,

LOUIS TITUS,
J. BARRETT CARTER,
Attorneys for Petitioner.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927.

No. 262. 30

THE UNITED STATES ex Relatione SKINNER & EDDY CORPORATION, Petitioner,

vs.

J. R. McCARL, Comptroller General of the United States, Respondent.

BRIEF FOR PETITIONER.

LOUIS TITUS,
J. BARRETT CARTER,
Attorneys for Petitioner.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926.

No. 257.

THE UNITED STATES EX RELATIONE SKINNER & EDDY CORPORATION, PETITIONER,

vs.

J. R. McCARL, COMPTROLLER GENERAL OF THE UNITED STATES, RESPONDENT.

BRIEF FOR PETITIONER.

Opinion Below.

The Supreme Court of the District of Columbia filed no opinion (R. 120). The opinion of the Court of Appeals of the District of Columbia is reported in 8 Fed. (2d) 1011 (R. 123).

Statement of Grounds of Jurisdiction.

The judgment to be reviewed was entered by the Court of Appeals of the District of Columbia Novem-

ber 2, 1925, on an appeal from a judgment of the Supreme Court of the District of Columbia dismissing a petition praying for a writ of mandamus directing respondent to pass upon a claim petitioner had filed with him under the provisions of Section 951 of the United States Revised Statutes.

The proceedings below were in accordance with the practice provided by the District Code (Sections 1273 to 1276, inclusive, of the Code of Law of the District of Columbia) and were as follows:

Petitioner filed its petition in the Supreme Court of the District of Columbia praying for a writ of mandamus, as above set forth (R. 1). Respondent filed an answer to this petition (R. 11). Petitioner demurred to this answer, which demurrer was overruled (R. 17-18). Petitioner filed a plea and traverse to the answer (R. 19). Respondent filed a demurrer to this plea and traverse (R. 119), which demurrer was sustained and the suit dismissed (R. 120).

On an appeal from the judgment of dismissal, the Court of Appeals of the District of Columbia affirmed the judgment of the lower court (R. 125). A petition for rehearing in the Court of Appeals was denied November 21, 1925 (R. 141). The judgment of the Court of Appeals has, therefore, become a final judgment.

The case comes to this Court on writ of certiorari under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (43 St. L. 936).

Statement of Facts.

The facts appear in the pleadings and are admitted by the demurrer of respondent. They are as follows:

(1) From May 28, 1917, to December 29, 1919, inclusive, petitioner entered into 18 contracts or supplemental contracts with the United States Shipping Board Emergency Fleet Corporation. Five of the principal contracts were for the construction of ships by petitioner for said Fleet Corporation (R. 23, 42, 58, 72, 88); one contract was for the sale by the Fleet Corporation to the petitioner of a shipbuilding plant at Seattle, Wash., (R. 54); and eight of the contracts were for repairs to vessels (R. 112-116).

(2) On April 25, 1919, all work on 25 ships to be constructed under two of the contracts was canceled by the Fleet Corporation (R. 119). Differences arose between petitioner and the Fleet Corporation, growing out of said several transactions, and on December 28, 1920, petitioner filed with the Auditor for the State and other departments a claim against the United States growing out of these contracts. The Auditor, regarding the claim as one against the Fleet Corporation, transmitted it to the Fleet Corporation and took no further action thereon (R. 2-6).

(3) On June 15, 1921, and upon the theory that the contracts under which the claim arose were contracts of the United States, suit was filed by petitioner in the United States Court of Claims on substantially the same claims presented to the Auditor (R. 12).

(4) On April 4, 1923, after it had been determined by this Court, in the case of *Sloan Shipyards Corporation vs. United States Shipping Board Emergency Fleet Corporation*, and allied cases, 258 U. S. 549, that similar contracts were Fleet Corporation contracts, the suit in the Court of Claims was dismissed by petitioner, without prejudice (R. 19). Subsequent to the order of the Court of Claims of April 4, 1923, allowing the dismissal of said suit, the Court of Claims set aside said order of dismissal, but on mandamus from the Supreme Court of the United States (*In Re Skinner & Eddy Corporation*, 265 U. S. 86), said order of dismissal was restored on the 16th day of May, 1924.

(5) On May 1, 1923 (after the suit was voluntarily dismissed in the Court of Claims), suit was filed by petitioner in the State court at Seattle, Wash., against the Fleet Corporation, for money claimed by petitioner to be due it from the Fleet Corporation on the same contracts which were the basis of the suit in the Court of Claims. That suit was removed by the Fleet Corporation to the United States District Court for the Western District of Washington, and the United States Attorney for that district appeared in said cause, by direction of the Attorney General of the United States, and filed a motion to dismiss, on the ground, among others, that the suit was a claim against the United States. That motion, at the time this proceeding was commenced, was still pending and undisposed of (R. 3).

(6) On April 16, 1923, the Fleet Corporation made an assignment to the United States of

> "All the goods, chattels, bonds secured by mortgages, bonds, notes, shares of stock, contracts, securities, claims, personal property, and choses in action, including accounts against divers persons for the payment of money, and all personal property of every kind and description whatsoever wherever the same may be situated" (R. 4).

By virtue of said assignment, the United States asserts a claim against petitioner, growing out of the contracts hereinbefore referred to, and through its attorneys and agents was, at the time this suit was filed, in active preparation to file suit against petitioner on such claim (R. 4). (Since this suit was filed, the United States has actually filed suit against petitioner on claims growing out of said contracts, without, however, alleging said assignment, as will hereinafter appear.)

(7) In anticipation of suit by the United States on said assigned claims, petitioner, on September 4, 1924, in order to take advantage of and to comply with the provisions of Section 951 of the United States Revised Statutes (quoted in the margin)* filed with the re

*"Section 951, R. S. In suits brought by the United States against individuals, no claim for a credit shall be admitted, upon trial, except such as appear to have been presented to the accounting officers of the Treasury, for their examination, and to have been by them disallowed, in whole or in part, unless it is proved to

spondent a claim against the United States, the clai
being based on the same contracts between the Fle
Corporation and petitioner hereinbefore referred
(R. 2). The respondent refused to act on the clai
until after the conclusion of the suit filed by pe
tioner at Seattle, Wash., against the Fleet Corpor
tion (R. 6), but when the case at bar came on f
hearing in the Supreme Court of the District
Columbia, the attorney for the respondent stated
open court (as appears from the order of the cou
overruling the demurrer) (R. 18) that the answ
filed by the respondent should be considered a deni
of jurisdiction on the part of respondent to consid
the claim at all. This was also the principal groun
of respondent's demurrer to petitioner's plea a
traverse (R. 119-120).

(8) It is alleged that when the United States fil
suit against petitioner on the claim assigned to it
the Fleet Corporation the suit will be filed in t
United States District Court for the Western Distri
of Washington, and that the judge presiding in th
court held, on February 8, 1924, in the case of *Unit
States* vs. *Fisher Flouring Mills Company*, 295 Fe
691, that in a suit brought by the United States on
cause of action assigned to it by the Fleet Corporati

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the satisfaction of the Court that the defendant is,
the time of the trial, in possession of vouchers n
before in his power to procure, and that he was pr
vented from exhibiting a claim for such credit at t
Treasury by absence from the United States or
some unavoidable accident."

the defendant in such suit, by reason of the provisions of Section 951, R. S., could not plead a set-off, credit, or counter-claim unless it had been first presented to the accounting officers of the Treasury and disallowed (R. 11).

(9) In addition to the foregoing facts, it was orally stated by counsel for respondent at the hearing in the Court of Appeals, and conceded by counsel for petitioner to be a fact, that after the filing of the petition for mandamus in this case the United States actually commenced a suit against petitioner upon these contracts in the United States District Court for the Western District of Washington. In the suit filed, the assignment from the Fleet Corporation to the United States is not pleaded, but said suit is based on the theory that the contracts were originally made by the United States. The pendency of this suit and of the suit filed by petitioner against the Fleet Corporation was the ground upon which the Court of Appeals of the District of Columbia affirmed the judgment of the lower court (R. 123; 8 Fed. (2d) 1011), the court holding that the issuance of the writ of mandamus prayed by petitioner would be an unwarranted interference with the action of the court in which said two suits were pending.

Specification of Errors to be Urged.

The assigned errors to be urged are that the Co
of Appeals of the District of Columbia erred:

(1) In holding that the Comptroller General co
properly refuse to pass upon the claim presented
him by petitioner on September 4, 1924, under S
tion 951 of the Revised Statutes, thus possibly dep
ing petitioner of the right to prove a credit, set-off,
counter-claim to the suit threatened by the Uni
States.

(2) In holding that after the suit was filed by
United States it was then too late for the Comptro
General to pass upon credits claimed by petitioner
such suit, and that to direct the Comptroller Gene
to pass upon such credits would be an unwarran
interference with the court in which such suit is pe
ing.

(3) In holding that because the claim assigned
the United States is subject to all existing equit
that, therefore, there is no necessity for action by
Comptroller General upon the claim for credits
sented to him, in order to insure to petitioner
benefit of such credits in a suit filed by the Un
States upon such assigned claim.

(4) In affirming the judgment of the Supreme C
of the District of Columbia holding that the Co
troller General has no jurisdiction to pass upon
claim presented to him on September 4, 1924, grow

out of contracts with the United States Shipping Board Emergency Fleet Corporation.

ARGUMENT.

Summary of Argument.

I.

Section 951 of the Revised Statutes gives the defendant in a suit by the United States a right to a counter-claim, credit, or set-off. But, before any such counter-claim, credit, or set-off can be admitted at the trial, a claim therefor must be presented to the accounting officers of the Treasury and be by them disallowed in whole or in part.

R. S., Section 951.

United States vs. Wilkins, 6 Wheat. 135, 144.

Watkins vs. United States, 9 Wall. 759, 764.

Halliburton vs. United States, 13 Wall. 63, 65.

United States vs. Fillebrown, 7 Pet. 28, 48.

Railroad Co. vs. United States, 101 U. S. 543, 548.

Smythe vs. United States, 188 U. S. 156, 172.

United States vs. Wade, 75 Fed. 261, 266.

United States vs. Cantrall, 176 Fed. 949, 954.

II.

The provisions of Section 951 apply to suits by the United States upon assigned claims, as well as suits by the United States upon direct claims.

R. S., Section 951.

United States vs. Fisher Flouring Mills Co., 295 Fed. 691.

III.

The duties of the six auditors having been transferred by statute to the Comptroller General, claims for credits must now be presented and passed upon by the Comptroller General.

Act of June 10, 1921, 42 St. L. 23-27.

IV.

The Comptroller General still has jurisdiction to pass upon claims for credit under Section 951 of the Revised Statutes, notwithstanding the provisions of the Merchant Marine Act of June 5, 1920 (41 Stat. L. 988). Section 951, R. S., gives to defendants a right to set-off which did not exist at common law (*Watkins vs. United States*, 9 Wall. 759, 764; *United States vs. Cantrall*, 176 Fed. 949, 954). This right cannot be taken away by implication. The Merchant Marine Act does not purport to repeal or modify in any manner Section 951, R. S., nor is there anything in the Merchant Marine Act which requires a claim for credit under Section 951, R. S., to be presented to the Shipping Board instead of to the accounting officers of the Treasury. Repeals or modifications of statutes by implication are not favored.

Cope vs. Cope, 137 U. S. 682, 686.

Henrietta Mining & Milling Co. vs. Gardner, 173 U. S. 123, 128.

Franke vs. Murray, 248 Fed. 865, 869.

Moss vs. United States, 29 App. D. C. 188, 197.

V.

A claim for credit under Section 951, R. S., may be presented to the Comptroller General and passed upon by him, even after suit commenced by the United States, and a writ directing the Comptroller General to act upon such claim is not an interference with the court wherein such suit is pending.

United States vs. Hawkins, 10 Pet. 125, 131.

VI.

The contracts upon which the threatened suit is based are contracts of the Fleet Corporation, not contracts of the United States.

Sloan Shipyards vs. U. S. S. B. E. F. C., 258 U. S. 549.

United States vs. Strang, 254 U. S. 491.

The Lake Monroe, 250 U. S. 246.

United States vs. Matthews, 282 Fed. 266.

U. S. S. B. E. F. C. vs. Banque Russo Asiatique, 286 Fed. 918.

Providence Eng. Corp. vs. Downey, 294 Fed. 641.

If the Fleet Corporation, therefore, had commenced suit upon these contracts, defendant could have pleaded and proved its claimed credits, but the assignment by the Fleet Corporation to the United States and the threatened suit by the United States upon such assignment places the defendant in a position where

it is in danger of losing its rights to establish such credits in such suit unless the Comptroller General is compelled to act.

VII.

Whether the suit that is eventually maintained by the United States is the one which it has already commenced upon the contracts, without pleading the assignment, upon the theory that the United States was the original party to the contracts, or whether the United States will eventually file suit upon the assignment, Section 951, R. S., is applicable. The refusal of respondent to act places petitioner in danger of losing its right to present at the trial its claim for the credits to which it believes itself entitled. To protect petitioner in this right, the writ of mandamus asked for should be issued.

Point I.

SECTION 951 OF THE REVISED STATUTES CONFERS UPON THE DEFENDANT IN A SUIT BY THE UNITED STATES A SUBSTANTIAL RIGHT WHICH CANNOT BE ARBITRARILY DENIED BY THE COMPTROLLER GENERAL. WHEN A CLAIM FOR SUCH CREDIT IS PRESENTED TO THE COMPTROLLER GENERAL, IT IS HIS DUTY TO ACT UPON SUCH CLAIM.

The record shows that the United States is threatening a suit against petitioner on claims assigned to it by the Fleet Corporation, and arising out of contracts made between petitioner and the said Fleet Corporation. The petitioner, in order to take advantage of the

provisions of Section 951 of the Revised Statutes, submitted, on September 4, 1924, to the respondent a claim which was a set-off or credit to the threatened suit. The respondent refused to take any action upon this claim.

Section 951 of the Revised Statutes provides, in so far as material, as follows:

> "In suits brought by the United States against individuals, no claim for a credit shall be admitted, upon trial, except such as appear to have been presented to the accounting officers of the Treasury, for their examination, and to have been by them disallowed, in whole or in part. * * *"

While the statute says "no claim for a credit," the Federal courts construe this to include claims by way of set off, or counter claim, and it is essential, before such a claim can be considered by the court, that it shall first have been presented to the accounting officers of the Treasury and disallowed.

The case of *United States vs. Wilkins*, 6 Wheat. 135, 144, indicates how broad a field the statute covers. In that case the court said:

> "There being no limitation as to the nature and origin of the claim for a credit which may be set up in the suit, we think it a reasonable construction of the act, that it intended to allow the defendant the full benefit, at the trial, of any credit, whether arising out of the particular transaction for which he was sued, or out of any distinct and independent transaction, which

would constitute a legal or equitable set-off, in whole or in part, of the debt sued for by the United States. The object of the act seems to be, to liquidate and adjust all accounts between the parties, and to require a judgment for such sum only, as the defendant in equity and justice should be proved to owe to the United States. If this be the true construction of the act, which we do not doubt, the defendant might well claim a credit in this suit for the sums due him, even if they had grown out of distinct and independent transactions, for he is legally, as well as equitably, entitled to them."

See also:

Watkins vs. United States, 9 Wall. 759, 764;
Halliburton vs. United States, 13 Wall. 63, 65;
United States vs. Fillebrown, 7 Pet. 28, 48;
Railroad Company vs. United States, 101 U. S. 543, 548;
Smythe vs. United States, 188 U. S. 156, 172;
United States vs. Wade, 75 Fed. 261, 266;
United States vs. Cantrall, 176 Fed. 949, 954.

It follows from the foregoing decisions that claims for credit, set-off, or counter-claim, before they may be received by the court in a suit by the United States, must be disallowed in whole or in part by the Comptroller General, who now is the accounting officer of the Treasury (Act of June 10, 1921, 42 Stat. L. 23).

The right to set-off did not exist at common law and would not exist in favor of a defendant in a suit

brought by the United States except for the provisions of Section 951, R. S.

Watkins vs. United States, 9 Wall. 759, 764.
United States vs. Cantrall, 176 Fed. 949, 954.

The statute gives this right of set-off or credit to a defendant in a suit by the United States, and the Comptroller General cannot deprive a defendant of such right by arbitrarily refusing to act.

The respondent, having refused to act, may be compelled to do so by mandamus.

Work, Secretary of the Interior, vs. Rives, 267 U. S. 175.

Point II.

SECTION 951 OF THE REVISED STATUTES APPLIES IN SUITS BROUGHT BY THE UNITED STATES UPON ASSIGNED CLAIMS, AS WELL AS SUITS BY THE UNITED STATES ON DIRECT CLAIMS.

Counsel for petitioner believe that this Court has held that contracts such as those involved in this case between petitioner and the United States Shipping Board Emergency Fleet Corporation are contracts of the Fleet Corporation, and not contracts of the United States. (See cases cited *infra* under Point VI hereof.)

The record shows that whatever claims the Fleet Corporation has against the petitioner on account of these contracts have been assigned to the United States, and that the United States is threatening a suit thereon. The claims for credit which the petitioner

has against this threatened suit arise out of the original contracts and transactions, and therefore would be proper claims for credit in the event the Fleet Corporation itself brought suit, and could be pleaded and proved in such a suit without hindrance.

If the claim had been assigned by the Fleet Corporation to an individual, and suit brought by such individual against petitioner, petitioner could have pleaded its claimed credits and would have been in no worse position than before the assignment was made.

Ballinger's Annotated Code & Statutes, Washington, Section 4835.

The language of Section 951, R. S., is "in suits brought by the United States." This language is broad enough to include all suits. There is no exception made in the case of a suit upon an assigned claim, and it would therefore seem to follow that Section 951 applies where the United States sues upon an assigned claim as well as where it sues upon a direct claim, and it was so held by the United States District Court for the Western District of Washington in the case of *United States vs. Fisher Flouring Mills Company*, 295 Fed. 691.

This Court has said, although not directly passing on the question of the application of the statute to assigned claims, that the object of the statute was to require a judgment—

> "for such sum only as the defendant in equity and justice should be proved to owe the United States."
>
> *United States vs. Wilkins, supra.*

If this be the object of the statute, it is clearly as applicable to assigned claims as to direct claims.

The assignment of the claim to the United States gives it no greater validity than it possessed in the hands of the assignor.

United States vs. Bulard, 3 Pet. 12, 30.

Neither does an assignment of a claim to the United States change the nature or legal effect thereof.

United States vs. Nashville, etc., Ry. Co. 118 U. S. 120, 125.

So that the situation that arises is as follows: If these contracts had been sued upon by the Fleet Corporation, or if they had been assigned to some other person than the United States, and suit brought thereon by the assignee, petitioner could have set up its credits and received proper allowance therefor in such suit. However, should suit be brought by the United States on the assigned claim, and it is admitted by the demurrer that such suit will be brought, petitioner is immediately met with the provisions of Section 951 of the Revised Statutes and the decision of the United States District Court for the Western District of Washington in the case of *United States vs. Fisher Flouring Mills Co.*, 295 Fed. 691, and it, therefore, runs grave hazard of having a judgment rendered against it in such suit, notwithstanding that it may have a perfect defense by way of credits which it is not allowed to set up because the Comptroller General refuses to pass upon the claim presented to him.

It is true that it now appears, by reason of the oral admissions in the Court of Appeals, that the suit which has actually been filed by the United States is a direct suit upon the contracts, without alleging the assignment. If the Government should be defeated in such suit upon the ground that the contracts are contracts of the Fleet Corporation and not contracts of the United States, there is nothing to prevent the Government from immediately filing suit upon the assigned claim, as the statute of limitations does not run against the Government.

Point III.

THE DUTIES OF THE SIX AUDITORS HAVING BEEN TRANSFERRED BY STATUTE TO THE COMPTROLLER GENERAL, CLAIMS FOR CREDITS UNDER SECTION 951, R. S., MUST NOW BE PRESENTED AND ACTED UPON BY THE COMPTROLLER GENERAL.

The Act of June 10, 1921 (42 Stat. L. 23-27), confers upon the Comptroller General

> "all powers and duties now conferred or imposed by law upon the Comptroller of the Treasury or the six auditors of the Treasury Department,"

and Section 236 of the Revised Statutes was amended to read as follows:

> "All claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the Govern-

> ment of the United States is concerned, either as debtor or creditor, shall be settled and adjusted in the General Accounting Office."

The same act provides that the General Accounting Office shall be under the control and direction of the Comptroller General of the United States.

It is, therefore, clear that it is the duty of the Comptroller General, under Section 951, R. S., to pass upon the claim which petitioner presented to him.

Point IV.

THE COMPTROLLER GENERAL HAS JURISDICTION TO PASS UPON THE CLAIMS PRESENTED, NOTWITHSTANDING THE PROVISIONS OF THE MERCHANT MARINE ACT OF JUNE 5, 1920.

The Supreme Court of the District of Columbia overruled petitioner's demurrer to the answer filed by respondent apparently upon the ground that the Comptroller General had no jurisdiction over the claims presented (R. 18). Counsel for respondent had contended that the Merchant Marine Act of June 5, 1920, gave exclusive jurisdiction to consider all claims of the character presented by petitioner to the Shipping Board, and, therefore, that the consideration and allowance or rejection of these claims was a matter over which the Comptroller General had no power.

This position is also taken by the Solicitor General in his brief filed in opposition to the granting of the petition for certiorari in this case. It therefore be-

comes necessary to consider the effect of the Mercha
Marine Act, if any, upon Section 951, R. S.

The Merchant Marine Act of June 5, 1920 (41 St
L. 988), subdivision C, Section 2, provides as follo
(p. 989):

> "As soon as practicable after the passage
> this Act the board shall adjust, settle, and liq
> date all matters arising out of or incident to t
> exercise by or through the President of any
> the powers or duties conferred or imposed up
> the President by any such Act or parts of Act
> and for this purpose the board, instead of t
> President, shall have and exercise any of su
> powers and duties relating to the determinati
> and payment of just compensation: *Provide*
> That any person dissatisfied with any decisi
> of the board shall have the same right to s
> the United States as he would have had if t
> decision had been made by the President of t
> United States under the Acts hereby repealed

Unless the quoted provisions of this act repeal
modify Section 951, R. S., then Section 951 still stan
as originally written. There is nothing in the Me
chant Marine Act which requires that a claim t
credit under Section 951, R. S., should be presented
the Shipping Board instead of to the accounting o
ficers of the Treasury. While the Merchant Mari
Act does provide that the Shipping Board shall "a
just, settle, and liquidate" matters arising out of th
exercise of the war powers granted to the Presider
it would be a strange construction to interpret th
into a statement that for the purposes of Section 95

R. S., a claim for credit must be presented to the Shipping Board.

Repeals or modifications of statutes by implication are not favored.

Cope vs. Cope, 137 U. S. 682, 686.

Henrietta Mining & Milling Co. vs. Gardner, 173 U. S. 123, 128.

Franke vs. Murray, 248 Fed. 865, 869.

Moss vs. United States, 29 App. D. C. 188, 197.

For the purpose of this argument only, we may grant that the above-quoted provision from the Merchant Marine Act gives the Shipping Board full authority, where it is possible, to adjust, settle, and liquidate all claims arising out of Fleet Corporation contracts. But in this case the Board, for some reason undisclosed by the record, has been unable to effect a settlement and has been unable to adjust and liquidate the claim, and the United States has actually commenced or is threatening a suit thereon. Section 2, subdivision (*b*), subparagraph (2), of the Merchant Marine Act is as follows (41 Stat. L. 988):

> "All rights, interests, or remedies accruing or to accrue as a result of any such contract or agreement or of any action taken in pursuance of any such Act or parts of Acts shall be in all respects as valid, and may be exercised and enforced in like manner, subject to the provisions of subdivision (c) of this section, as if this Act had not been passed."

It seems clear, therefore, that there was no intent on the part of Congress to deprive any person who had

contracts with the Fleet Corporation of any righ
remedies which such person might have with re
to said contracts. What subdivision (c), previ
quoted, really means, therefore, is that the Shi
Board is given the authority to make settle
where possible, which authority it would not othe
have had.

But it does not seem reasonable that Congre
passing the Merchant Marine Act, intended to de
a defendant of his right to credits in cases wher
United States sued upon Fleet Corporation cont

It also seems unreasonable that Congress int
by the passage of the Merchant Marine Act
amend Section 951, R. S., as to require claim
credit in suits by the United States involving
Corporation contracts to be presented to the Shi
Board instead of to the accounting officers o
Treasury.

It is true that in the case of *United States vs.*
ball, 101 U. S. 726, this Court held that a present
of the claim involved in that case to the Commiss
of Internal Revenue was a compliance with S
951, R. S. The decision of the court was mere
the effect that where the United States had s
collector of internal revenue, a presentation of a
to the Commissioner of Internal Revenue, and
jection by that officer of such credit, was a pres
tion to and rejection by the "accounting officers
Treasury." The Commissioner of Internal Re
is an officer of the Treasury, and was held in that
to be an accounting officer of the Treasury, but

is far from holding that the Shipping Board, which is an independent establishment of the United States, is an accounting officer of the Treasury.

There is no conflict of jurisdiction between the Comptroller General and the Shipping Board. The Merchant Marine Act gives the Shipping Board the power to make settlements, if it can, of certain controversies. But where a settlement is not made and a suit commenced or threatened by the United States, then the Comptroller General is the official to whom must be presented all claims for credit in such suit.

Point V.

A CLAIM FOR CREDIT MAY BE PRESENTED TO THE COMPTROLLER GENERAL AND PASSED UPON BY HIM EVEN AFTER SUIT COMMENCED BY THE UNITED STATES.

The Court of Appeals in its opinion held that because suits had actually been commenced on these contracts, the issuance of the writ of mandamus by the Supreme Court of the District of Columbia would be an unwarranted interference by the Supreme Court with a court of co-ordinate jurisdiction, and that, therefore, it must affirm the Supreme Court's refusal to issue such writ.

The writ requested would simply require the Comptroller General to take action upon the claim presented to him. Such writ is not directed to the District Court at Seattle, and it is apparent that it could not interfere with any action that the Seattle court might choose to take. If the Comptroller General

acts, he must either allow or disallow the claim in whole or in part. If he disallows the claim, the court manifestly would not be interfered with, for the whole case would be left to its determination, but in that event the defendant would have put itself in a position where it would have the opportunity of proving, if it could, the credits which the Comptroller General had disallowed. If, on the other hand, the Comptroller General allowed the claim, such action would not interfere with the court, for the reason that such action would be merely an admission by the United States, through its properly authorized officer, that the amounts allowed were due. A plaintiff in an action can always admit, if he chooses, that defendant is entitled to certain credits and such admission does not constitute an interference with the court before which the case is pending. It is manifest, therefore, that to order the Comptroller General to act would be no interference with the Seattle court.

In the case of *United States* v. *Hopkins*, 10 Fed. 125, certain credits in favor of one of the defendants had been offered at the trial. The Attorney General, relying on Section 951, R. S., objected to the consideration of these credits upon the ground (see page 128):

> "It did not appear that the documents to sustain them had been presented to the proper officers of the Treasury, before the commencement of this suit."

In its decision on this point, this Court said (page 131 of the opinion):

> "In regard to so much of the exception which objects to the introduction of the bills, orders or documents claimed as credits in the defendants' supplemental answer, because they had not been presented to the proper accounting officers, and disallowed, *previous to the commencement of the suit*, we remark, it has never been the practice of the circuit courts, in suits under the law of the 3d March, 1797," (Sec. 951, Rev. Stat.) "to deny to defendants a claim for credits against the United States, because they had not been presented and disallowed, before the commencement of the suit. The practice to allow a claim for credits, *after the suit has been commenced*, is sustained by the spirit and letter of the third and fourth sections of the statute.
>
> • • • • • • •
>
> "He" (defendant) "may have them submitted to a jury, at the trial, if they have been refused by the accounting officers of the Treasury, after the suit has been instituted." (Italics ours.)

Here is a direct holding by this Court that the accounting officers of the Treasury should pass upon a claim, even if presented after a suit covering the same subject had been filed. It is apparent that the Court of Appeals failed to give proper effect to this decision. Moreover, the claim was presented to the Comptroller General before suit was filed by the United States.

Point VI.

THE CONTRACTS UPON WHICH THE THREATENED SUIT IS BASED ARE CONTRACTS OF THE FLEET CORPORATION—NOT CONTRACTS OF THE UNITED STATES. THEREFORE, ANY SUIT EVENTUALLY MAINTAINED BY THE UNITED STATES MUST BE UPON AN ASSIGNED CLAIM.

Counsel for petitioner firmly believe that this Court has directly held that contracts such as those involved in this case between the petitioner and the Fleet Corporation are Fleet Corporation contracts and not contracts of the United States.

Sloan Shipyards Co. v. U. S. S. B. E. F. C., 258 U. S. 549.

United States ex rel. Strang, 254 U. S. 491.

The Lake Monroe, 250 U. S. 246.

Contracts Out of Which Claim Arises are Contracts of Fleet Corporation.

The first contract between the parties is dated May 28, 1917 (R. 23), and is between Skinner & Eddy Corporation and the United States Shipping Board Emergency Fleet Corporation. This contract omits the words "representing the United States," which words are found in several of the subsequent contracts. The Act of June 15, 1917 (40 Stat. L. 182), was the first act of Congress to give the President his war powers and as this contract was executed prior to that date, it can scarcely be argued that the contract was made under that act.

The main shipbuilding contracts subsequent to the first one do contain the words "representing the United States." The effect of these words will be considered later. However, there were numerous contracts for repairs to ships, as well as other contracts, which were made by the Fleet Corporation in its own name, the words "representing the United States" being omitted (R. 112-116).

Contract for Purchase of Ship Yard.

One of the most important contracts between the parties was made on the 11th day of May, 1918 (R. 54). This contract is worthy of more than a cursory examination, because it is the foundation agreement of the greater part of the dealings between Skinner & Eddy Corporation, on the one hand, and the Fleet Corporation, on the other. It provides, not only for the sale by the Fleet Corporation to Skinner & Eddy Corporation of a shipyard, but also provides for the construction of 50 steel ships at a total contract price of almost one hundred million dollars. It also refers to the purchase of a shipyard made by the Fleet Corporation from the Seattle Construction and Dry Dock Company under a contract dated May 10, 1918.

This contract of May 10, 1918 (R. 56), is for the purchase by the Fleet Corporation of the entire shipbuilding plant of the Seattle Construction and Dry Dock Company, this being the same plant that the Fleet Corporation, the very next day, agreed to sell to Skinner & Eddy Corporation. The purchase price to the Fleet Corporation of this plant was $3,874,313.

of this purchase price $1,374,313 was to be paid in cash and the balance to be paid by accepting the property subject to two mortgages totaling $2,500,000. This contract of May 10, 1918, wherein the Fleet Corporation agreed to purchase this property, appears on its face to be a contract of the Fleet Corporation, as the words "representing the United States" do not appear. After reciting the existence of two mortgages on the property, the contract contains the following provision (R. 56):

> "We, or our nominee, will assume these mortgages, if after an examination of the provisions of the mortgages or deeds of trust we are convinced that a foreclosure would follow if we did not assume them. We shall likewise take such steps as may be necessary to relieve your other assets from the liens of these mortgages, and will hold you harmless from the possibility of a deficiency judgment."

To foreclose a mortgage necessarily implies that the property itself shall be sold to satisfy the mortgage, and the owner ousted from possession. The United States cannot be ousted of possession of property which it owns, and its title foreclosed by the process of foreclosing a mortgage. Neither the Court of Claims nor any other court would have jurisdiction of such an action.

In *The Siren*, 7 Wall. 152, 157, the Supreme Court said:

> "So also express contract liens upon the property of the United States are incapable of enforcement. A mortgage upon property, the

> title to which had subsequently passed to the United States, would be in the same position as a claim against a vessel of the Government, incapable of enforcement by legal proceedings. The United States, possessing the fee, would be an indispensable party to any suit to foreclose the equity of redemption, or to obtain a sale of the premises."

The last part of the clause above quoted from the contract of May 10, 1918, is:

> "Will hold you harmless from the possibility of a deficiency judgment."

In other words, here is a guarantee to pay the debt of another, including principal, interest and costs. Such a contract could hardly be made on behalf of the United States.

As the contract itself does not even purport to bind the United States, and as it contains agreements that no agent of the United States could have made, it necessarily follows that this agreement to buy the yard was made by the Fleet Corporation in its own corporate capacity.

Turn now to the agreement of May 11, 1918, which was the agreement wherein the Fleet Corporation undertook to sell this yard to Skinner & Eddy Corporation (R. 54). We find that this agreement also is signed by the Fleet Corporation in its own capacity, there being nowhere any indication that the Fleet Corporation is representing the United States. There was at this time no authorization to the President by

Congress to lease or to sell yards, or to dispose
them in any manner, and there never was any a
thority in the President or the Fleet Corporation
anyone else, to lease, sell or otherwise dispose of suc
property of the United States, until Congress gav
such authority on the 19th of July, 1919, considerabl
more than a year after this transaction. On th
date Congress passed the Sundry Civil Appropri
tions Act (41 St. L. 163) and provided in this act
follows (p. 181):

> "Any material or plant, as defined under th
> emergency shipping fund provision of the D
> ficiency Appropriation Act approved June
> 1917, acquired by the United States Shippin
> Board Emergency Fleet Corporation, may
> disposed of as the President may direct."

It is apparent, therefore, that the Fleet Corpora
tion, as the agent of the Government, could neith
have leased nor sold this yard on the date it made th
contract for the reason that there was no authoriz
tion by Congress covering such transactions.

It is a fundamental law that property of the Unit
States cannot be disposed of, except under positiv
authority from Congress. *The Constitution of th
United States*, Article IV, Section 3, par. 2, reads:

> "The Congress shall have power to dispose
> and make all needful rules and regulations r
> specting the territory or other property belon
> ing to the United States; and nothing in th
> Constitution shall be so construed as to preju
> dice any claims of the United States, or of an
> particular state."

Main Shipbuilding Contracts.

As these contracts are all in practically the same form, we refer to only one—the contract of June 1, 1918 (R. 72). This contract contains in the caption the words "representing the United States," but it also declares that the Fleet Corporation, party of the second part, is the "owner." Throughout the contract every obligation and undertaking on the part of the second party, is set out as the obligation and undertaking of the *owner*. It is the *owner* that is to accept the vessels, and it is the *owner* that is to pay for them. It is the *owner* that has the right to appoint inspectors to examine the work. Any notice of rejection must be signed by a representative designated by the *owner*. If there is an increase in labor costs, it must be borne by the *owner*, and if there are any decreases in such costs, it is the *owner* that receives the benefit. Any overtime, in order to charge the *owner*, must be specifically authorized by the *owner* in advance. Any increase in freight rates is to be borne by the *owner*. It is the *owner* that may make alterations, omissions, additions or substitutions, in which event if the cost of construction is increased, it is the *owner* that will pay such increase. In case of advanced delivery, the *owner* agrees to pay a bonus therefor, and in case of failure to deliver within the times designated in the contract, the contractor must pay the *owner* a penalty.

Under the terms of the contract, no one is bound or obligated on the part of the second party, except the

owner. There is no obligation whatever on the part
the *United States*, unless the United States is it
the *owner*.

Examining the contract, then, for the purpose
determining who really is the "owner," in addition
the positive statement in the caption, we find the
lowing:

In subdivision 4 of Article II (R. 75) occurs
following clause:

> "If at any time within six months after
> aforesaid acceptance of any of the said vess
> any defect in the material or workmansh
> other than such as are due to fair wear a
> tear or misuse, shall appear, same shall be c
> rected and repaired to the satisfaction of
> Director General of the Owner, . . ."

We know that there was a Director General of
Fleet Corporation, but of course the United Stat
had no such officer. The words, "Director Gener
of the Owner" occur all through these contracts.

In addition to these clauses indicating that
"Owner" must be the Fleet Corporation, there is
clear distinction made in several of the clauses in
contract between the "Owner" and the United State
In Article III, Section 2, it is provided (R. 77):

> "If the Contractor be delayed or obstruct
> in the transaction or completion of the wo
> provided for by this contract by the act, dela
> neglect or default of the Owner or by reason
> alterations or additions by the Owner, or t
> commandeering by the United States Gover
> ment of materials, . . ."

Article XX is as follows (R. 84):

> "It is recognized in view of war conditions, that it may become necessary for the United States to exercise control over the manner and priority in which materials and equipment are obtained under this contract. It is agreed between the parties hereto that if it is desired by the *Owner and or the United States*, that all contracts and agreements for equipment and materials to be used under this contract shall be submitted to the Owner and or the United States, and that any orders given to the Contractor by the Owner, or the United States with regard to such contracts and agreements, will be promptly complied with by the Contractor."

Here is a clear distinction between the Owner and the United States.

In addition, the attesting clause of every contract is as follows (R. 85):

> "In witness whereof the parties hereto have caused this contract to be signed by their respective officers and their corporate seals to be hereunto affixed. * * *."

Here is a statement that the contract is signed by the respective officers of the parties, and the corporate seals of the parties attached. These contracts are signed by officers of the Fleet Corporation and the seal of the Fleet Corporation is attached. These officers of the Fleet Corporation are not officers of the United States. *United States vs. Strang*, 254 U. S. 491.

Intent of Congress was That Fleet Corporation Sh
Contract on Its Own Account.

The United States Shipping Board Emerge
Fleet Corporation was incorporated under the gen
laws of the District of Columbia. All of its cap
stock has been at all times owned by the United Sta

The Act of June 15, 1917 (40 St. L. 182), author
the President to place orders for the construction
ships, appropriated money therefor, provided t
the President might delegate the powers given h
and then contained the following provision (p. 18

> "*Provided*, That all money turned over to
> United States Shipping Board Emergency F
> Corporation may be expended as other mon
> of said corporation are now expended."

This clause was inserted with the obvious purp
that the Fleet Corporation should have entire fr
dom in contracting, and that all the ordinary gove
mental restrictions surrounding the making of c
tracts of the Government should be removed.

That this was the clear intent of Congress appe
from the remarks made in the Senate at the time t
particular clause of the Act of June 15, 1917, w
under consideration. Senator Underwood, in discu
ing the Act of June 15, 1917, and this particular p
vision thereof, said (Vol. 55, part 4, *Congressio*
Record, 65th Congress, page 3540):

> "I was told by Gen. Goethals that under t
> terms of this bill, if passed, he would be nam
> as the agency, or rather that the Emergen

> Fleet Corporation, of which he is general manager, would be named as the agency to expend this money. He desired the authorization to come in that way, for this reason. He said that it would give him a broader latitude in which to make his contracts. He could make them as a corporation, and not be bound by the requirements of law that would restrict his action if he made them as a governmental officer; in other words, if he is designated as a governmental officer, he would probably have to publish advertisements for bids in many cases, while acting for a corporation he would not have to do so. As a governmental officer in carrying out this provision he would have to make many reports and be delayed by red tape and technicalities that would not embarrass him if he were carrying on the transaction acting for a corporation. Of course, the corporation is owned by the Government and controlled by the Government; the Government is the entire corporation; but he expressed to me his view that he would have greater latitude."

Authorities Hold These to be Fleet Corporation Contracts.

The leading authority is the combined cases of *Sloan Shipyards Corporation vs. United States Shipping Board Emergency Fleet Corporation; Astoria Marine Iron Works vs. United States Shipping Board Emergency Fleet Corporation*, and *United States Shipping Board Emergency Fleet Corporation vs. Wood, Trustee*, 258 U. S. 549.

We eliminate largely from this discussion the *Sloan* case, because the decision of this Court in that case

appears to have rested mainly upon the ground that the complaint alleged a tort by the Emergency Fleet Corporation, and that the mere fact that the Fleet Corporation might be an agent of the Government could not in any event excuse it from the consequences of its tortious acts. The Court said, at page 568, of the opinion:

> "We attach no importance to the fact that the second contract, alleged to have been illegally extorted, was made with the Fleet Corporation 'representing the United States of America.' The Fleet Corporation was the contractor, even if the added words had any secondary effect."

It will be noted that the Court said that the Fleet Corporation was the contractor. That can mean but one thing, that the Fleet Corporation was the party to the contract.

In the *Astoria* case, the suit was for damages for breach of contract, the contract being in almost every particular similar to the shipbuilding contracts in the present case, and contained the words, "representing the United States." Of this contract this Court said (p. 569):

> "Throughout the contract the undertakings of the party of the second part are expressed to be undertakings of the Corporation, and it is this corporation and its officers that are to be satisfied in regard to what is required from the Iron Works.
>
> . . . . . .

> "The whole frame of the instrument seems to us plainly to recognize the Corporation as the immediate party to the contract. The distinction between it and the United States is marked in the phrase last quoted. If we are right in this, further reasoning seems to us unnecessary to show that there was jurisdiction of the suit. The fact that the corporation was formed under the general laws of the District of Columbia is persuasive, even standing alone, that it was expected to contract and to stand suit in its own person, whatever indemnities might be furnished by the United States."

This appears to be a direct and unequivocal holding of this Court that the contract sued upon was not a contract of the United States, but a contract of the Fleet Corporation.

The third case, entitled *United States Shipping Board Emergency Fleet Corporation, representing the United States, vs. Wood, trustee in bankruptcy*, is also decisive of this question.

In that case the contract in question was in all material respects exactly similar to the main shipbuilding contracts in the case at bar. Under that contract the Fleet Corporation had paid large sums of money when the shipbuilding company defaulted upon its contract and was forced into bankruptcy. A claim for the money advanced under this contract was presented to the referee by the Fleet Corporation on behalf of the United States. A preference was claimed for this indebtedness on the ground that the United States was entitled to a preference.

There were thus two questions to be decided: First, was the claim a claim of the United States or a claim of the Fleet Corporation? Second, if it were a claim of the United States, was the United States entitled to a preference?

The Circuit Court of Appeals had held that the debt was not a debt due to the United States, but was a debt due to the Fleet Corporation and, therefore, it was unnecessary to determine whether, if it were a debt of the United States, the United States would have a preference (274 Fed. 893).

This Court affirmed the order of the Circuit Court of Appeals and, in referring to the claim for preference on account of this debt, said (p. 570):

> "It was denied successively by the referee, the District Court and the Circuit Court of Appeals on the ground that the Fleet Corporation was a distinct entity, and that, whatever might be the law as to a direct claim of the United States, the Fleet Corporation stood like other creditors and was not to be preferred. 274 Fed. 893. The considerations that have been stated apply even more obviously to this case."

There had been no question in the previous cases as to whether or not the United States was entitled to a preference; therefore, in using the words "the considerations that have been stated apply even more obviously to this case," this Court must have referred to the language it had just previously used in deciding the *Astoria* case, where, under a similar contract, it had held that the Fleet Corporation was the contractor.

It seems a fair deduction that this decision was based squarely upon the ground that the debt arising under such a contract was not a debt of the United States, but was a debt of the Fleet Corporation. If this be true, it follows that here is the final authority holding that contracts similar to the ones in the case at bar are not contracts of the United States.

See also:

Haines vs. Lone Star Shipbuilding Co., 268 Penn. 92;

Providence Engineering Co. vs. Downey, 294 Fed. 641;

United States vs. Matthews, 282 Fed. 266;

United States vs. Wood, 280 Fed. 109;

Providence Engineering Co. vs. Downey, 3 Fed. (2d) 154.

The record shows that whatever claim the Fleet Corporation has against the petitioner on account of these contracts has been assigned to the United States, and that the United States is threatening a suit thereon. The claims for credit which the petitioner has against this threatened suit arise out of the original contracts and transactions and, therefore, would be proper claims for credit in the event the Fleet Corporation itself brought suit, and could be pleaded and proved in such a suit without hindrance.

The situation thus presented is that had the Fleet Corporation brought suit against petitioner upon these contracts petitioner could have set up and proved its credits, but the assignment by the Fleet

Corporation to the United States and the refusal of the Comptroller General to act places petitioner in a position where it is in grave danger of losing its rights to establish such credits, through no fault of its own.

Point VII.

SUIT ALREADY COMMENCED BY THE UNITED STATES IS NOT ON ASSIGNED CLAIM, BUT ON DIRECT CLAIM THAT THESE ARE CONTRACTS OF THE UNITED STATES; SECTION 951, R. S., THEREFORE, IS CLEARLY APPLICABLE.

If the action now pending is properly brought by the United States directly, without pleading the assignment, then necessarily the credits growing out of the same contracts are credits against the United States, and the Comptroller General should be compelled to act. This would be in accordance with the decision of the Supreme Court in the case of *United States vs. Hawkins*, 10 Pet. 125, where the then accounting officers of the Treasury did act after suit commenced, and such act was approved by the Supreme Court.

It must be apparent, however, that the attorneys for the United States may at any moment change their mind and bring a suit upon the assigned claim. Indeed, counsel for petitioner believe that such is the only suit which the United States can maintain. As the statute of limitations never runs against the United States, a new suit pleading the assignment may, of course, be filed at any time. In fact, the

record in this case shows that such suit is actually threatened (R. 4).

So that whether the suit by the United States now pending upon an alleged direct claim or whether the threatened suit by the United States upon the assigned claim be the suit which the United States will eventually seek to maintain, the respondent in either case should be required to act upon petitioner's claim in order that petitioner may not be deprived of the right to present such legitimate credits as it may be able to establish.

Conclusion.

The decision of the lower court leaves the petitioner in an extraordinarily awkward position. The United States has commenced suit upon these contracts in the United States District Court at Seattle. The petitioner here, who is the defendant in the Seattle suit, has what it considers to be perfectly legitimate credits in large amounts growing out of the original transaction. The same United States District Court before which the suit against the petitioner is now pending has held in the case of *United States vs. Fisher Flouring Mills Company, supra*, that in such a suit by the United States the defendant cannot be allowed any credits unless Section 951, R. S., be complied with. The appellant has done everything it can do to comply with the conditions of Section 951, R. S. It first presented its claim to the Auditor for the State and Other Departments, who at that time was the proper accounting officer of the Treasury, and that officer re-

fused to pass upon the claim. After the Comptroller General superseded the accounting officers of the Treasury, the claim was again presented to the Comptroller General, and that officer refused to pass upon the claim.

Section 951, R. S., says that no credit can be allowed in suit by the United States unless such claim has been presented and disallowed by such officer. Consequently, unless this Court grants this petition, there is grave danger that the Seattle court may hold petitioner barred, despite its utmost diligence, from proving its proper claim for credit.

We submit that the United States should not be permitted to deprive a defendant of the right given by statute, to prove a credit, through the refusal of one of its own officers to act upon a properly presented claim, and that therefore the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

LOUIS TITUS,
J. BARRETT CARTER,
Attorneys for Petitioner.

ADDENDA.

Since the foregoing brief was printed, the Circuit Court of Appeals for the Ninth Circuit, in an opinion rendered January 31, 1927, has affirmed that part of the decision of Judge Cushman in the case of United States vs. Fisher Flouring Mills Co., 295 Fed. 691, holding that in a suit by the United States upon an assigned claim the defendant cannot be allowed a credit unless the claim for such credit has first been presented to the accounting officers of the Treasury and by them disallowed, and that such presentation and disallowance must be pleaded in the answer. This decision emphasizes the necessity of the issuance of a writ in the present case unless grave injustice is to be done.

However, if this Court be of opinion that petitioner is entitled to prove its credits in the action by the United States now pending in Seattle, and also in the action threatened by the United States upon the claim assigned by the Fleet Corporation, without further action by the Comptroller General, then the whole purpose of this litigation will be accomplished by a holding of this Court to that effect.

INDEX

AUTHORITIES CITED

for rehearing was filed, entertained, and denie November 21, 1925. (R. 141.) Petition for cert orari was filed pursuant to Section 240(a) of th Judicial Code as amended by the Act of Februar 13, 1925.

STATEMENT

The petitioner, Skinner and Eddy Corporatio seeks a writ of mandamus to compel the Comptrol ler General to consider and allow or disallow cer tain claims or credits asserted by the petitione against the United States, arising out of certai contracts made between the petitioner and th Fleet Corporation, acting on behalf of the Unite States.

It appears that the United States has a sui pending against Skinner and Eddy Corporation i the United States District Court for the Weste District of Washington.[1]

Section 951 of the Revised Statutes provides:

> In suits brought by the United State against individuals, no claim for a credit shall be admitted, upon trial, except such as appear to have been presented to the ac counting officers of the Treasury, for their examination, and have been by them dis allowed, in whole or in part, unless it is proved to the satisfaction of the court that the defendant is, at the time of the trial, in possession of vouchers not before in his power to procure, and that he was prevented

[1] The record shows this suit was threatened. (R. 4.) It has actually been commenced since this case was instituted. (R. 124.)

> from exhibiting a claim for such credit at the Treasury by absence from the United States or by some unavoidable accident.

Section 305 of the Budget and Accounting Act of June 10, 1921, Chap. 18, 42 Stat. 20, 24, reads as follows:

> All claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the Government of the United States is concerned, either as debtor or creditor, shall be settled and adjusted in the General Accounting Office.

The result of the latter statute is that claims required to be presented under Section 951 of the Revised Statutes must now be presented to the General Accounting Office, unless, as contended by the United States in this case, other provision is made by law.

In order to comply with Section 951, R. S., and put itself in a position, as it contends, to be able to prove its credits and set-offs in the aforementioned suit brought by the United States, the petitioner presented to the General Accounting Office on September 4 1924 (R. 2), its claims against the United States with a request (R. 7–10) that the Comptroller General allow or disallow them.

The Comptroller General refused to consider the claims presented or to act upon them. His refusal is not based on any defect in the manner or form in which the claims were presented, but on the ground

that subdivision (c) of Section 2 of the Merchant Marine Act of June 5, 1920, Chap. 250, 41 Stat. 988, 989, relieves the General Accounting Office from auditing, settling, and adjusting the matters here involved and places that duty on the Shipping Board.

Subdivision (c) of Section 2 of the Merchant Marine Act of 1920 reads as follows:

> As soon as practicable after the passage of this Act the board shall adjust, settle, and liquidate all matters arising out of or incident to the exercise by or through the President of any of the powers or duties conferred or imposed upon the President by any such Act or parts of Acts; and for this purpose the board, instead of the President, shall have and exercise any of such powers and duties relating to the determination and payment of just compensation: *Provided*, That any person dissatisfied with any decision of the board shall have the same right to sue the United States as he would have had if the decision had been made by the President of the United States under the Acts hereby repealed.

THE QUESTIONS

The questions presented are:

(1) Whether the duty rests upon the Comptroller General to consider and allow or disallow these claims; and

(2) Whether, assuming the duty rests upon him, the petitioner may be prevented by Section 951

of the Revised Statutes from establishing its claims for credits and set-offs, by the refusal of the General Accounting Office to consider its claims.

It is the contention of the respondent that the duty of adjusting and settling these claims does not rest upon him, but upon the Shipping Board, and that, in any event, the refusal of the General Accounting Office to consider and act upon these claims will not prevent the petitioner, under Section 951 of the Revised Statutes, from proving its credits and set-offs in the pending action brought by the United States because the petitioner is in as good position as if the General Accounting Office had considered and disallowed its claims.

ADDITIONAL FACTS

All of the contracts between the petitioner and the Fleet Corporation were entered into by the Fleet Corporation "representing the United States of America." (R. 30, 42, 59, 72, 85, 88, 102, 104.)

The first contract did not so state (R. 23), but the agreement supplemental to it did so recite. (R. 30.)

Although at the time the claims were originally presented to it the General Accounting Office assigned various reasons for its refusal to act, it does appear that it definitely refused to act on these claims, and, in its return to the order to show cause why a writ of mandamus should not issue, the Comptroller General justified his refusal to act on the ground that jurisdiction to adjust and settle the

claims had been taken from the General Accounting Office and conferred upon the Shipping Board by the Merchant Marine Act of 1920. (R. 13.)

Some of the history of this controversy is disclosed in *Ex parte Skinner and Eddy Corporation*, 265 U. S. 86, and in *United States* v. *Skinner and Eddy Corporation*, 5 F. (2d) 708.

ARGUMENT

SUMMARY

I. The duty of adjusting, settling, and allowing or disallowing claims against the United States arising out of contracts made by the Emergency Fleet Corporation on behalf of the United States, such as are here involved, rests not on the General Accounting Office, but on the Shipping Board, and consequently the Comptroller General, by refusing to consider petitioner's claims, has not failed or refused to perform any duty imposed upon him by law.

II. Even if the duty of auditing these claims rests upon the General Accounting Office, the petitioner has sufficiently complied with Section 951 of the Revised Statutes by presenting its claims. The purpose of the statute is satisfied if the claims are presented and the General Accounting Office finally refuses to act upon them as well as if it considered and disallowed them.

I

It is not the duty of the Comptroller General to settle and adjust these claims

Subdivision (c) of Section 2 of the Merchant Marine Act of 1920 set forth in the Statement of Facts took from the General Accounting Office and placed upon the Shipping Board the duty of adjusting, settling, and liquidating all " matters arising out of or incident to the exercise by or through the President of any of the powers or duties conferred " upon him by any of the Acts or parts of Acts referred to in the Merchant Marine Act of 1920.

If the contracts described in the petition for a writ of mandamus arose out of or were incident to the exercise by the President of any of the powers conferred by Acts or parts of Acts mentioned in subdivision (c) of Section 2 of the Merchant Marine Act of 1920, then, manifestly the General Accounting Office is not charged with the duty of adjusting, settling, or liquidating them; and if Section 951 of the Revised Statutes requires the petitioner to present these claims to any accounting officer for allowance or disallowance as a condition precedent to proving the claims or credits in the suit brought against it by the United States, the presentation should be made to the Shipping Board, which is charged with the duty of adjusting, settling, and liquidating them.

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The Acts, or parts of Acts, referred to in subdivision (c) of Section 2 of the Merchant Marine Act of 1920 are disclosed by the following review of the Shipping Acts:

The Shipping Board was organized by authority of the Act of September 7, 1916, chap. 451 (39 Stat. 728). By Section 4, it was provided that "the Auditor for the State and Other Departments shall receive and examine all accounts of expenditures of the board."

Section 5 (repealed by the Merchant Marine Act of 1920) provided:

> That the board, with the approval of the President, is authorized to have constructed and equipped in American shipyards and navy yards or elsewhere, giving preference, other things being equal, to domestic yards, or to purchase, lease, or charter, vessels suitable, as far as the commercial requirements of the marine trade of the United States may permit, for use as naval auxiliaries or Army transports, or for other naval or military purposes, and to make necessary repairs on and alterations of such vessels • • •.

The authority for the organization of the Fleet Corporation is Section 11 of the Act of 1916 which provides:

> That the Board, if in its judgment such action is necessary to carry out the purpose of this Act, may form under the laws of the District of Columbia one or more corporations for the purchase, construction • • •

> of merchant vessels in the commerce of the United States. At the expiration of five years from the conclusion of the present European war the operation of vessels on the part of any such corporation in which the United States is then a stockholder shall cease * * *. The vessels or other property of such corporation shall revert to the board.

The Fleet Corporation was organized under this authority with a capital stock of $50,000,000.

By the Emergency Shipping Fund provisions of the Act of Congress approved June 15, 1917, chap. 29 (40 Stat. 182), as amended, it was provided:

> 1. The President is hereby authorized and empowered, within the limits of the amounts herein authorized—
>
> (a) To place an order with any person for such ships or material as the necessities of the Government, to be determined by the President, may require during the period of the war and which are of the nature, kind and quantity usually produced or capable of being produced by such person.
>
> (b) To modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material or take possession, lease, or assume control of, any street railroad, interurban railroad, or part thereof, cars and other equipment necessary to operation.
>
> (c) To require the owner or occupier of any plant in which ships or materials are built or produced to place at the disposal

of the United States the whole or any part of the output of such plant, to deliver such output or part thereof in such quantities and at such times as may be specified in the order.

(d) To acquire, construct, establish, or extend any plant, and in pursuance thereof, to purchase, requisition, or otherwise acquire title to or use of land improved or unimproved or interest therein; and to requisition and take over for use or operation by the United States any plant, or any part thereof without taking possession of the entire plant, whether the United States has or has not any contract or agreement with the owner or occupier of such plant.

The President may exercise the power and authority hereby vested in him and expend the money herein and hereafter appropriated through such agency or agencies as he shall determine from time to time.

By Executive Order No. 2664, dated July 11, 1917, the President delegated powers to the Emergency Fleet Corporation as follows:

I hereby direct that the United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority vested in me in said section of said act, in so far as applicable to and in furtherance of the construction of vessels, purchase or requisitioning of vessels in process of construction * * * and all power and authority applicable to and in furtherance

> of the production, purchase, and requisitioning of materials for ship construction.

The Emergency Shipping Fund provisions, *supra*, were amended by the Acts of April 22, 1918, chap. 62 (40 Stat. 535), and by the Act of November 4, 1918, chap. 201 (40 Stat. 1020, 1022), which are not material for present purposes. By Executive Order No. 2888, dated June 18, 1918, the President delegated to the Fleet Corporation the powers under the amending Act of April 22, 1918.

By Executive Order No. 3018, dated December 3, 1918, the President, by a reference to the several Acts, including the amendment of November 4, 1918, again delegated to the Fleet Corporation "all power and authority now vested in me by said laws with reference to any and all activities which may be directly or indirectly applicable to ship or plant construction * * *." Section 3 provides:

> All acts heretofore done by said Corporation or by said Board, with reference respectively to the kinds of power or authority herein delegated to each, and which could have been properly done by me under such statutes or any of them, be, and they are hereby, ratified and confirmed.

This fairly reviews the authority under which the construction contracts were made between the Fleet Corporation and the Skinner & Eddy Corporation. From the transcript of record, only one construction contract was executed prior to the Act of June 15, 1917, and the Executive Order of July

11, 1917, and apparently is with the corporation in its corporate capacity. However, a supplemental agreement amending this contract was entered into on February 16, 1918, between Skinner & Eddy and the Fleet Corporation representing the United States. All the subsequent contracts were made by the Fleet Corporation " representing the United States."

It is understood that all construction contracts made subsequent to July 11, 1917, were made by the Fleet Corporation representing the President under authority of the Act of June 15, 1917, as amended, and the several Executive Orders relating thereto and that payments for such constructions were made out of appropriations made available to the President for that purpose.

The Fleet Corporation may, in some of its activities, have made contracts in its own right, and in other cases have acted in a representative capacity for the United States. The contracts of the petitioner were made in a representative capacity.

These Acts, above reviewed, are the legislative authority for the construction contracts between the Skinner and Eddy Corporation and the Fleet Corporation. Subdivision (c) of Section 2, of the Act of 1920, above quoted, specifically places the adjustment, settlement, and liquidation of such construction claims with the Shipping Board.

Whether the claims and causes of action involved in the suit brought by the United States against the Skinner and Eddy corporation were claims

originally owned by the Fleet Corporation and assigned to the United States or whether they have always belonged to the United States by reason of the fact that in this case the Fleet Corporation acted as agent for the United States and not in its own right, is immaterial. The contracts referred to plainly arose out of or were incident to the exercise by or through the President of powers conferred upon him by the statutes referred to in subdivision (c) of Section 2 of the Merchant Marine Act of 1920, and the General Accounting Office was by that Act relieved of the duty of settling and adjusting them and allowing or disallowing any claims against the United States in the way of credits or set-offs, or otherwise, arising out of these contracts.

II

The purpose of section 951 of the Revised Statutes has been accomplished

The petitioner was not entitled to a mandamus merely upon a showing that the General Accounting Office has refused to perform a duty imposed upon it by law. In order to entitle the petitioner to relief, it was necessary for it to go further and show that it had been left in a position where it would not be allowed to offer evidence in support of its credits and set-offs in its defense of the suit brought against it by the United States. It occurs to us, considering the purpose of, and the underlying reasons for the enactment of Section 951 of

the Revised Statutes, that a sufficient compliance with that statute results from a presentation of the claims to the proper officers and their refusal to consider them.

The leading case on the purpose of Section 951 of the Revised Statutes (originally enacted as the Act of March 3, 1797, c. 20, Sec. 4; 1 Stat. 512, 515) is *Cox* v. *United States*, 6 Pet. 172, in which it was said, on page 201:

> The law was intended for real and substantial purposes; that the United States should not be surprised by claims for credits, which they might not be able to meet and explain in the hurry of a trial.

In *United States* v. *Hawkins*, 10 Pet. 125, 133, it was said that the statute "guards the district attorney from surprise, by informing him, through the treasury department, before the time of trial, of the credits which have been claimed, and the reasons for the rejection of them."

In *United States* v. *Fisher Flouring Mills Co.* (D. C., W. D. Wash.), 295 Fed. 691, the court quoted the above passage from *Cox* v. *The United States*, and added (p. 694):

> It may be that Congress also intended that the accounting officers of the United States, if upon investigation of the claim asserted as a set-off it was found to be meritorious, should have an opportunity to adjust the differences and save the United States the expense of litigation.

In *Alexander* v. *United States* (C. C. A. 9th Circ.), 57 Fed. 828, is was said, on page 833, that the statute "evidently was designed to prevent the introduction of evidence to reduce the liability of individuals in cases of this kind until the department should have had an opportunity to examine into the nature of the claim, and reject or allow the same."

It has been held that, while no particular form is essential to the allowance or disallowance of a claim, a mere suspension of action is not a disallowance. *Yates* v. *United States* (C. C. A. 9th Circ.), 90 Fed. 57.

In *United States* v. *Fletcher*, 147 U. S. 664, the claim in question was one sought to be enforced against the United States in a United States Circuit Court sitting as a Court of Claims and not one for a credit in a suit brought by the United States, but the court referred to section 951 by way of analogy and, after stating that presentment of a claim to an executive department was not a prerequisite to suit against the United States, said (p. 667):

> But if such claims are presented to the department for allowance, and the department, in the exercise of its discretion, suspends action upon them until proper vouchers are furnished, or other reasonable requirements are complied with, the courts should not assume jurisdiction until final action is taken. So long as the claim is pending and awaiting

final determination in the department, cour
should not be called upon to interfere,
least unless it ignores such claim or fai
to pass upon it within a reasonable time.

In *United States* v. *Hawkins*, 10 Pet. 125, it wa
held that a claim for credit, in order to be consi
ered in a suit brought by the United States, nee
not be presented to the Treasury and disallowe
before the commencement of the suit. But in tha
case the Supreme Court had reversed a judgmen
with directions to award a venire *facias de nov*
Upon the return of the mandate, one of the de
fendants petitioned the District Court to be allowe
to file a supplemental answer, pleading a set-off o
claims which he stated had been presented and dis
allowed at the Treasury Department, and the onl
question before the Court was whether the petitio
should have been granted.

In several cases demurrers to pleadings hav
been sustained on the ground that the pleadings di
not allege compliance with Section 951 of the Re
vised Statutes.

Ware v. *United States*, 4 Wall. 617, 63
United States v. *Cantrall* (C. C., Dist
Oregon), 176 Fed. 949.
United States v. *Fisher Flouring Mill
Co.* (Dist. Ct., West. Dist. Wash.) 295 Fed
691.

The statute has also been considered in the fol
lowing cases:

United States v. *Wilkins*, 6 Wheat. 135,
143.

United States v. *Giles*, 9 Cranch, 212.
Watkins v. *United States*, 9 Wall. 759.
Smythe v. *United States*, 188 U. S. 156, 173.
United States v. *Macdaniel*, 7 Pet. 1.
United States v. *Kimball*, 101 U. S. 726.

If the purpose of Section 951 of the Revised Statutes was to warn the United States in advance of the trial of the fact that credits and set-offs are to be asserted against it and advise the United States of their nature, that purpose has been served, if it was the duty of the Comptroller General to consider these claims, by the presentation of them to the General Accounting Office. It is stretching the statute to unreasonable limits to construe it as prohibiting the petitioner from being allowed to establish its credits and set-offs against the United States unless it follows up its presentation and the refusal of the Comptroller General to act, by carrying to the court of last resort a petition for a writ of mandamus to compel him to act and allow or disallow the claims.

If this Court declines to issue the writ of certiorari it will appear that the petitioner has exhausted every means open to it to procure a consideration of its claims by the accounting officers.

The latter part of Section 951 of the Revised Statutes excuses a claimant from showing that his claims for credits have been presented to the accounting officers of the Treasury for their examination and allowance or disallowance, if it appears

to the satisfaction of the court that the defendant was prevented from exhibiting his claim for such credits at the Treasury by lack of vouchers or by absence from the United States or " by some unavoidable accident." If these grounds are sufficient excuse for not procuring allowance or disallowance of its credits, surely the petitioner may not be deprived of its right to establish its credits and set-offs where it is able to show to the trial court that it duly presented its claims; that the accounting officers finally and definitely refused to consider them on the ground that they had no statutory authority to do so, and where it further appears that the petitioner prosecuted through two courts unsuccessfully, a petition for a mandamus to compel the accounting officers to act.

In the case of *United States* v. *Fisher Flouring Mills Co.*, 295 Fed. 691, which held that in a suit by the United States on a cause of action assigned to it by the Fleet Corporation the defendant was not entitled to plead a set-off by the Fleet Corporation which had not been presented to the accounting officers of the Treasury, as required by Section 951 of the Revised Statutes, it did not appear that the claim had actually been presented to the accounting officers and that the accounting officers had definitely declined to consider it, nor does it appear from the opinion in that case that the point was raised that the Merchant Marine Act of 1920 had taken from the General Accounting Office and conferred upon the Shipping Board the

duty of adjusting and settling claims such as those here presented.

CONCLUSION

It is clear, first, that the Comptroller General is not charged by law with the duty of settling and adjusting the petitioner's claims; that the duty to adjust and settle them rests with the Shipping Board, and, second, in any event, if the duty of considering these claims rests upon the General Accounting Office, as the petitioner has presented its claims to that office and that office has finally refused to consider them on the ground that it has not jurisdiction to do so, petitioner will not be deprived by Section 951 of the Revised Statutes of the right to offer evidence to establish its credits and set-offs in the pending suit against it by the United States.

The decision of the Court of Appeals of the District of Columbia was right, although we are unable to support the reason assigned for it in the last paragraph of the opinion. (R. 125.)

The application to this Court for a writ of certiorari is the result of an overabundance of caution on the part of the petitioner.

Respectfully submitted.

WILLIAM D. MITCHELL,
Solicitor General.
R. E. GOLZE, *Solicitor.*
M. E. RHODES, *Counsel.*

JANUARY, 1926.

INDEX

CITATIONS

Cases:

In the Supreme Court of the United States

OCTOBER TERM, 1926

No. 257

THE UNITED STATES EX REL. SKINNER AND EDDY Corporation, Petitioner

v.

J. R. McCARL, COMPTROLLER GENERAL OF THE United States

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR THE COMPTROLLER GENERAL

OPINION BELOW

The Supreme Court of the District of Columbia filed no opinion. The opinion of the Court of Appeals of the District of Columbia is reported in 8 F. (2d) 1011. (R. 123.)

JURISDICTION

The judgment of the Court of Appeals of the District of Columbia was entered on November 2, 1925. (R. 125.) Motion for rehearing was filed, entertained, and denied November 21, 1925. (R. 125.) The petition for certiorari was filed Decem-

ber 18, 1925, and granted on January 18, 1926 (R. 125, 126), pursuant to Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

THE QUESTIONS PRESENTED

The petitioner, Skinner and Eddy Corporatiaon, seeks a writ of mandamus to compel the Comptroller General to consider and allow or disallow a certain claim or credit asserted by the petitioner arising out of certain contracts made between the petitioner and the United States Shipping Board Emergency Fleet Corporation, representing the United States. The Comptroller General has refused to act upon the claim on the ground that he has no jurisdiction over it. The questions presented are:

(1) Whether, assuming that the Comptroller General has jurisdiction over the claim, its presentation to him, followed by his refusal to act upon it, is not such a compliance with Section 951 of the Revised Statutes as to permit the petitioner to introduce proof of the claim in the trial of any suit now pending or hereafter brought by the United States against the petitioner.

(2) Whether the duty to consider and act upon the claim rests upon the Comptroller General under Section 305 of the Budget and Accounting Act of June 10, 1921, c. 18, 42 Stat. 20, 24, or upon the Shipping Board under Subdivision (c) of Section 2 of the Merchant Marine Act of June 5, 1920, c. 250, 41 Stat. 988, 989.

STATUTES INVOLVED

Section 951 of the Revised Statutes is as follows:

> In suits brought by the United States against individuals, no claim for a credit shall be admitted, upon trial, except such as appear to have been presented to the accounting officers of the Treasury, for their examination, and to have been by them disallowed, in whole or in part, unless it is proved to the satisfaction of the court that the defendant is, at the time of the trial, in possession of vouchers not before in his power to procure, and that he was prevented from exhibiting a claim for such credit at the Treasury by absence from the United States or by some unavoidable accident.

Section 305 of the Budget and Accounting Act of June 10, 1921, c. 18, 42 Stat. 20, 24 (amending Section 236, R. S.), is as follows:

> All claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the Government of the United States is concerned, either as debtor or creditor, shall be settled and adjusted in the General Accounting Office.

Subdivision (c) of Section 2 of the Merchant Marine Act of June 5, 1920, c. 250, 41 Stat. 988, 989, is as follows:

> As soon as practicable after the passage of this Act the board shall adjust, settle, and liquidate all matters arising out of or incident to the exercise by or through the Presi-

dent of any of the powers or duties conferre
or imposed upon the President by any suc
Act or parts of Acts; and for this purpos
the board, instead of the President, sha
have and exercise any of such powers an
duties relating to the determination and pay
ment of just compensation: *Provided,* Tha
any person dissatisfied with any decision o
the board shall have the same right to su
the United States as he would have had i
the decision had been made by the Presider
of the United States under the Acts hereb
repealed.

STATEMENT

The petitioner, Skinner and Eddy Corporatio
brought this proceeding for a writ of mandamus t
compel the Comptroller General to consider and a
upon a claim of the petitioner against the Unite
States, amounting to $32,354,387.47. (R. 1–5
This claim arose out of certain contracts betwe
the petitioner and the Emergency Fleet Corpor
tion (R. 3, 14), and was submitted to the Gener
Accounting Office on September 4, 1924. (R. 2, 12
The Comptroller General first refused to tak
action upon the claim until after final determin
tion of a suit pending in the United States Distri
Court for the Western District of Washingto
Northern Division, brought by the petition
against the Emergency Fleet Corporation and i
volving the subject matter of the claim. (R. 6–7
Subsequently, however, the Comptroller Gener
based his refusal to act upon the claim also up
the ground that jurisdiction to settle and adju

the claim had been taken from the General Accounting Office and conferred upon the Shipping Board by the Merchant Marine Act of 1920. (R. 13, 18, 119–120.)

All of the contracts out of which the claim in question arose, except the first one (R. 23), recited that they were between the petitioner and the Fleet Corporation, "representing the United States of America" (R. 30, 42, 59, 72, 85, 88, 102, 104), and the first contract was amended by a supplemental contract containing such a recital. (R. 30.)

The petitioner bases its contention that it is entitled to a writ of mandamus wholly upon the argument that unless the Comptroller General formally disallows the petitioner's claim, it will be prevented under Section 951 of the Revised Statutes from proving the claim as a credit in litigation by the United States against it. The petition alleged that such litigation was threatened (R. 4), and it has since actually been commenced (R. 124).

The Supreme Court of the District of Columbia sustained a demurrer to the petitioner's plea and traverse to the respondent's answer, and dismissed the suit (R. 120), and the judgment of the Supreme Court was affirmed by the Court of Appeals (R. 125).

SUMMARY OF ARGUMENT

I. On the assumption the claim is within the jurisdiction of the Comptroller General, the petitioner is not entitled to a writ of mandamus unless further action by the Comptroller General is neces-

sary under Section 951 of the Revised Statutes in order to permit the petitioner to assert its claim as a credit in the litigation now pending, or subsequent litigation, brought against it by the United States. No such further action is necessary; the purpose of Section 951, which is to give notice to the United States and enable it to prepare to meet claims, has been satisfied by the presentation of the claim to the General Accounting Office, followed by the Comptroller General's refusal to act upon it.

II. The duty of adjusting, settling, and liquidating claims against the United States arising out of contracts made by the Emergency Fleet Corporation on behalf of the United States, such as the claim here involved, rests not on the General Accounting Office, but on the Shipping Board, and consequently the Comptroller General in refusing to consider the petitioner's claim has not failed or refused to perform any duty imposed upon him by law.

ARGUMENT

I

IF THE COMPTROLLER GENERAL HAS JURISDICTION OVER THE MATTER, THE PURPOSE OF SECTION 951 OF THE REVISED STATUTES HAS BEEN SATISFIED BY THE PRESENTATION OF THE PETITIONER'S CLAIM TO THE GENERAL ACCOUNTING OFFICE, FOLLOWED BY THE COMPTROLLER GENERAL'S REFUSAL TO ACT UPON IT

The petitioner throughout this proceeding has based its contention that it is entitled to a writ of mandamus wholly upon the argument that formal

disallowance of its claim by the Comptroller General is necessary as a prerequisite to setting up such claim as a credit in litigation brought by the United States. In the Addenda to the petitioner's brief in this Court it is stated that if the petitioner is entitled to prove its credits in the present or a future action brought by the United States, "without further action by the Comptroller General, then the whole purpose of this litigation will be accomplished by a holding of this Court to that effect."

Moreover, mandamus is an extraordinary remedial process and should not be awarded if the petitioner is free to litigate its claim in the suit brought by the United States and now pending, or any other suit which may hereafter be brought by the United States. *Reeside* v. *Walker*, 11 How. 272, 291–292; *Ex parte Skinner & Eddy Corp.*, 265 U. S. 86.

It appears to us that, considering the purpose of Section 951 of the Revised Statutes, a sufficient compliance with the section results from a presentation of a claim to the proper officers and their refusal to consider it. The claim is "disallowed," within the meaning of the statute, when the accounting officers refuse to allow it, whether such refusal rests upon supposed lack of jurisdiction or determination after consideration of the claim that it is without merit.

The leading case on the purpose of Section 951 of the Revised Statutes (originally enacted as the Act of March 3, 1797, c. 20, Sec. 4, 1 Stat. 512,

515) is *Cox* v. *United States*, 6 Pet. 172, in which it was said, on page 202:

> The law was intended for real and substantial purposes; that the United States should not be surprised by claims for credits, which they might not be able to meet and explain in the hurry of a trial.

To the same effect is *United States* v. *Standard Aircraft Corporation*, 16 F. (2d) 307.

In *United States* v. *Hawkins*, 10 Pet. 125, 133, it was said that the statute "guards the district-attorney from surprise, by informing him, through the treasury department, before the time of trial, of the credits which have been claimed, and the reasons for the rejection of them."

In *United States* v. *Fisher Flouring Mills Co.* (D. C., W. D., Wash.), 295 Fed. 691, the court quoted the above passage from *Cox* v. *United States*, and added (p. 694):

> It may be that Congress also intended that the accounting officers of the United States, if upon investigation of the claim asserted as a set-off it was found to be meritorious, should have an opportunity to adjust the differences and save the United States the expense of litigation.

In *Alexander* v. *United States* (C. C. A. 9th Circ.), 57 Fed. 828, it was said, on page 833, that the statute "evidently was designed to prevent the introduction of evidence to reduce the liability of individuals in cases of this kind until the department should have had an opportunity to examine

into the nature of the claim, and reject or allow the same."

It has been held that, while no particular form is essential to the allowance or disallowance of a claim, a mere suspension of action is not a disallowance. *Yates* v. *United States* (C. C. A. 9th Circ.), 90 Fed. 57.

In *United States* v. *Patterson* (C. C. S. D. Iowa), 91 Fed. 854, 856, after referring to Section 951, the court said:

> Manifestly it is but just that the government shall have opportunity to examine into the credits which an agent or other disbursing officer of the government claims to be properly allowable in his behalf, as against money or property placed under his charge. Frequently the place where this credit is claimed to have been earned or to have become due is on the frontier, among Indian tribes, in distant ports, or in other places not easily accessible; or the government may find the tracing out of this credit claim—the ascertainment of the surrounding facts—a difficult matter. Thus, it is but just that the government be informed, and have opportunity of ascertaining the correctness of the claim. If found correct, it is to be presumed that the claim will be allowed, and, as to such, litigation rendered unnecessary. And, if not found correct, there is yet reserved in court, to the agent or official, when sued, his opportunity of pressing the claim for credit, thus disallowed by the department.

In *United States* v. *Fletcher*, 147 U. S. 664, the claim in question was one sought to be enforced against the United States in a United States Circuit Court sitting as a Court of Claims and not one for a credit in a suit brought by the United States, but the court referred to Section 951 by way of analogy and, after stating that presentment of a claim to an executive department was not a prerequisite to suit against the United States, said (p. 667):

> But if such claims are presented to the department for allowance, and the department, in the exercise of its discretion, suspends action upon them until proper vouchers are furnished, or other reasonable requirements are complied with, the courts should not assume jurisdiction until final action is taken. So long as the claim is pending and awaiting final determination in the department, courts should not be called upon to interfere, at least, unless it ignores such claim or fails to pass upon it within a reasonable time.

Section 951 has also been considered in the following cases, none of which throw any light on the question here presented:

Ware v. *United States*, 4 Wall. 617, 630.

United States v. *Cantrall*, 176 Fed. 949.

United States v. *Wilkins*, 6 Wheat. 135, 143.

United States v. *Giles*, 9 Cranch, 212.

Watkins v. *United States*, 9 Wall. 759.

United States v. *Macdaniel*, 7 Pet. 1.
United States v. *Kimball*, 101 U. S. 726.
Smythe v. *United States*, 188 U. S. 156, 173.

If the purpose of Section 951 of the Revised Statutes was to warn the United States in advance of the trial of the fact that credits and set-offs are to be asserted against it and advise the United States of their nature, that purpose has been served, if it was the duty of the Comptroller General to consider these claims, by the presentation of them to the General Accounting Office. It is stretching the statute to unreasonable limits to construe it as prohibiting the petitioner from being allowed to introduce evidence to establish its credits and set-offs against the United States unless it follows up its presentation and the refusal of the Comptroller General to act by carrying to the court of last resort a petition for a writ of mandamus to compel him to act and allow or disallow the claims.

The latter part of Section 951 of the Revised Statutes excuses a claimant from showing that his claim for credit has been presented to the accounting officers of the Treasury for their examination and allowance or disallowance if it appears to the satisfaction of the court that the defendant was prevented from exhibiting his claim at the Treasury by lack of vouchers or by absence from the United States or "by some unavoidable accident." If these grounds are sufficient excuse for not exhibit-

ing a claim at the Treasury, surely the petitioner may not be deprived of its right to establish its claim where it is able to show to the trial court that it duly presented its claim and that the accounting officers finally and definitely refused to consider it on the ground that they had no statutory authority to do so.

Moreover, considering the purpose of the statute, we think it clear that the word "disallow," as used in Section 951 of the Revised Statutes, means no more than a definite refusal to allow and carries no implication that such refusal must be based upon consideration and rejection of the merit of the claim presented. See *Dix* v. *Dix*, 132 Ga. 630, 631; *Skilton* v. *Codington*, 105 App. Div. (N. Y.) 616, 617; *Pepper* v. *Warren*, 2 Marv. (Del.) 225; *Warner* v. *Supervisors of Outagamie Co.*, 19 Wis. 611, 613.

The United States has never asserted that by virtue of Section 951 the petitioner is not entitled to prove its claim in the pending litigation with the United States. On the contrary it has admitted and now admits that if the matter is one within the jurisdiction of the Comptroller General, rather than of the Shipping Board, the presentation of the claim may be considered as satisfying the requirements of Section 951.

II

IT IS NOT THE DUTY OF THE COMPTROLLER GENERAL TO SETTLE AND ADJUST THE PETITIONER'S CLAIM, AND CONSEQUENTLY HE CAN NOT BE COMPELLED TO CONSIDER AND ACT UPON THE CLAIM

Section 305 of the Budget and Accounting Act of 1921, which provides that all claims and demands of or against the United States shall be settled and adjusted in the General Accounting Office, is an amendment of Section 236 of the Revised Statutes, which provided for such settlement and adjustment by the Department of the Treasury. Subdivision (c) of Section 2 of the Merchant Marine Act of 1920 provides that the Shipping Board shall adjust, settle, and liquidate "all matters arising out of or incident to the exercise by or through the President of any of the powers or duties conferred or imposed" upon him by any of the Acts or parts of Acts referred to in Subdivision (c) of Section 2 of the Merchant Marine Act of 1920.

It is a well-settled rule of statutory construction "that general and specific provisions, in apparent contradiction, whether in the same or different statutes, and without regard to priority of enactment, may subsist together, the specific qualifying and supplying exceptions to the general." *Townsend* v. *Little*, 109 U. S. 504, 512. See also *Rodgers* v. *United States*, 185 U. S. 83, 87-88; *Washington* v. *Miller*, 235 U. S. 422, 428.

It follows that if the contracts described in the petition for a writ of mandamus arose out of or

were incident to the exercise by or through the President of any of the powers or duties conferred or imposed upon him by any of the Acts or parts of Acts referred to in Subdivision (c) of Section 2 of the Merchant Marine Act of 1920, then the Shipping Board, and not the General Accounting Office, has the power and duty to adjust, settle, and liquidate them.

The fact that the Budget and Accounting Act of 1921 was enacted later than the Merchant Marine Act of 1920 is of no consequence. The former Act was only intended to amend an earlier statute by transferring settlement of accounts from the Treasury to the Comptroller General, and not to vest in the latter power which had been taken from the Treasury by the Merchant Marine Act of 1920.

The Acts, or parts of Acts, referred to in subdivision (c) of Section 2 of the Merchant Marine Act of 1920 may be summarized as follows:

The Shipping Board was organized by authority of the Act of September 7, 1916, c. 451, 39 Stat. 728.

Section 5 (repealed by the Merchant Marine Act of 1920) provided (p. 730):

> That the board, with the approval of the President, is authorized to have constructed and equipped in American shipyards and navy yards or elsewhere, giving preference, other things being equal, to domestic yards, or to purchase, lease, or charter, vessels suitable, as far as the commercial requirements of the marine trade of the United States may

> permit, for use as naval auxiliaries or Army transports, or for other naval or military purposes, and to make necessary repairs on and alterations of such vessels * * *.

The authority for the organization of the Fleet Corporation is Section 11 of the Act of 1916 which provides:

> That the board, if in its judgment such action is necessary to carry out the purposes of this Act, may form under the laws of the District of Columbia one or more corporations for the purchase, construction * * * of merchant vessels in the commerce of the United States. * * *
>
> At the expiration of five years from the conclusion of the present European war the operation of vessels on the part of any such corporation in which the United States is then a stockholder shall cease * * *. The vessels and other property of any such corporation shall revert to the board. * * *

The Fleet Corporation was organized under this authority with a capital stock of $50,000,000.

By the Emergency Shipping Fund provisions of the Act of Congress approved June 15, 1917, c. 29, 40 Stat. 182, as amended by the Act of April 22, 1918, c. 62, 40 Stat. 535, and by the Act of November 4, 1918, c. 201, 40 Stat. 1020, 1022, it was provided:

> 1. The President is hereby authorized and empowered, within the limits of the amounts herein authorized—

(a) To place an order with any person for such ships or material as the necessities of the Government, to be determined by the President, may require during the period of the war and which are of the nature, kind and quantity usually produced or capable of being produced by such person.

(b) To modify, suspend, cancel, or requisition any existing or future contract for the building, production, or purchase of ships or material or take possession, lease or assume control of, any street railroad, interurban railroad, or part thereof, cars and other equipment necessary to operation.

(c) To require the owner or occupier of any plant in which ships or materials are built or produced to place at the disposal of the United States the whole or any part of the output of such plant, to deliver such output or part thereof in such quantities and at such times as may be specified in the order.

(d) To acquire, construct, establish, or extend any plant, and in pursuance thereof, to purchase, requisition, or otherwise acquire title to or use of land improved or unimproved or interest therein; and to requisition and take over for use or operation by the United States any plant, or any part thereof without taking possession of the entire plant, whether the United States has or has not any contract or agreement with the owner or occupier of such plant.

* * * * *

The President may exercise the power and authority hereby vested in him, and expend

> the money herein and hereafter appropriated through such agency or agencies as he shall determine from time to time * * *.

By Executive Order No. 2664, dated July 11, 1917, the President delegated powers to the Emergency Fleet Corporation as follows:

> I hereby direct that the United States Shipping Board Emergency Fleet Corporation shall have and exercise all power and authority vested in me in said section of said act, in so far as applicable to and in furtherance of the construction of vessels, purchase or requisitioning of vessels in process of construction * * * and all power and authority applicable to and in furtherance of the production, purchase, and requisitioning of materials for ship construction.

By Executive Order No. 2888, dated June 18, 1918, the President delegated to the Fleet Corporation the powers under the amending Act of April 22, 1918.

By Executive Order No. 3018, dated December 3, 1918, the President, by a reference to the several Acts, including the amendment of November 4, 1918, again delegated to the Fleet Corporation "all power and authority now vested in me by said laws with reference to any and all activities which may be directly or indirectly applicable to ship or plant construction * * *." Section 3 provides:

> All acts heretofore done by said Corpora
> tion or by said Board, with reference respec
> tively to the kinds of power or authorit
> herein delegated to each, and which coul
> have been properly done by me under suc
> statutes or any of them, be, and they ar
> hereby, ratified and confirmed.

The contracts described in the petition for a wri of mandamus arose out of the exercise by or through the President of the powers or duties conferred o imposed upon him by the Acts referred to above Only one of the contracts was executed prior t the Act of June 15, 1917, and the Executive Orde of July 11, 1917, and was not specifically made b the Fleet Corporation as the representative of th United States. A supplemental contract amendin this contract, and all of the subsequent contracts were made by the Fleet Corporation "representin the United States."

In *The Lake Monroe*, 250 U. S. 246, this Cour said that the Fleet Corporation was but an operat ing agency of the Shipping Board, financed wit public funds. In *United States* v. *Walter*, 263 U. S 15, it was said that the Fleet Corporation was a instrumentality of the Government. Cf. *U. S Grain Corp.* v. *Phillips*, 261 U. S. 106; *Clallam County* v. *United States*, 263 U. S. 341. Most, i not all, of the funds available to the Fleet Corpora tion for ship construction were received by i through the President, and Congress probably in tended that all such contracts should be adjusted

settled, and liquidated by the Shipping Board. There can, at any rate, be no question of such intention with respect to contracts in making which the Fleet Corporation was expressly "representing the United States."

That the Shipping Board is to adjust, settle, and liquidate all contracts of the Fleet Corporation, and that the jurisdiction of the General Accounting Office is confined to auditing the transactions of the Fleet Corporation, and in such audit giving effect to the settlements made by the Shipping Board, is the inference to be drawn from the provisions of the Act of July 1, 1918, c. 113, 40 Stat. 634, 651, authorizing and directing the Secretary of the Treasury, and the provisions of the Act of March 20, 1922, c. 104, 42 Stat. 437, 444, authorizing and directing the Comptroller General "to cause an audit to be made of the financial transactions" of the Fleet Corporation.

In the case of *United States* v. *Fisher Flouring Mills Co.*, 295 Fed. 691, which held that in a suit by the United States on a cause of action assigned to it by the Fleet Corporation the defendant was not entitled to plead a set-off by the Fleet Corporation which had not been presented to the accounting officers of the Treasury, as required by Section 951 of the Revised Statutes, it did not appear that the claim had actually been presented to the accounting officers and that the accounting officers had definitely declined to consider it, nor does it

appear from the opinion in that case that the poin
was raised that the Merchant Marine Act of 192
had taken from the General Accounting Office an
conferred upon the Shipping Board the duty o
adjusting and settling claims such as those her
presented.

Whether the claims and causes of action involve
in the suit brought by the United States agains
the petitioner were claims originally owned by th
Fleet Corporation and assigned to the Unite
States or whether they have always belonged to th
United States by reason of the fact that the Fle
Corporation acted as agent for the United State
and not in its own right is immaterial. It is als
immaterial whether the Fleet Corporation is itsel
bound by the contracts made by it as agent for th
United States. The contracts referred to in th
petition for a writ of mandamus plainly arose ou
of or were incident to the exercise by or throug
the President of the powers conferred upon him b
the statutes referred to in Subdivision (c) of Se
tion 2 of the Merchant Marine Act of 1920, and th
Shipping Board, and not the General Accountin
Office, has the authority and duty to settle an
adjust them and to allow or disallow any claim
against the United States in the way of credits o
set-offs, or otherwise, arising out of the contracts.

It is, of course, obvious that if the Comptrolle
General has no jurisdiction to allow or disallow th
claims in question, he can not be compelled b
mandamus to act upon them.

CONCLUSION

If the Comptroller General has jurisdiction of these claims, their presentation to him, followed by his refusal to act, was a sufficient compliance with Section 951, R. S., and the petitioner is entitled to offer proof of them in litigation with the United States. The alternative is that the Comptroller General has no jurisdiction to act on these claims.

In the one case the petitioner does not need a writ of mandamus and in the other the petitioner is not entitled to it. We do not rely on the ground stated at the end of the opinion of the Court of Appeals.

The judgment of the Court of Appeals of the District of Columbia should be affirmed.

WILLIAM D. MITCHELL,
Solicitor General.
GARDNER P. LLOYD,
Special Assistant to the Attorney General.

MARCH, 1927.

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(19)

SUPREME COURT OF THE UNITED STATES.

No. 30.—October Term, 1927.

The United States ex rel. Skinner & Eddy Corporation, Petitioners, *vs.* J. R. McCarl, Comptroller General of the United States.	On certiorari to the Court of Appeals of the District of Columbia.

[October 10, 1927.]

Mr. Justice Brandeis delivered the opinion of the Court.

This is a petition for a writ of mandamus brought in the Supreme Court of the District of Columbia in October, 1924. The relator, Skinner & Eddy Corporation, seeks to compel the Comptroller General to pass upon its claims against the Government. These arise under contracts made during the years 1917, 1918 and 1919 with the United States Shipping Board Emergency Fleet Corporation. Most of the contracts refer to the corporation as "representing the United States." The claims were presented to the Comptroller General for allowance, because Skinner & Eddy wished to be in a position to use them as a credit, if the United States should, as was threatened, sue on the contracts. It deemed this course necessary, because § 951 of the Revised Statutes (United States Code, Title 28, § 774) provides: "In suits brought by the United States against individuals, no claim for a credit shall be admitted, upon trial, except such as appear to have been presented to the accounting officers of the Treasury, for their examination, and to have been by them disallowed . . ." Compare *United States* v. *Fisher Flouring Mills Co.*, 295 Fed. 691; 17 F. (2d) 232. The Comptroller General declines to consider the claims, asserting that he has neither the duty, nor the power to do so; and that the duty of passing upon them rests with the Shipping Board.

In 1923, the Fleet Corporation assigned to the United States, all of its assets, including accounts against divers persons for the pay-

ment of money. Thus, the United States is the owner, either as principal or as assign of the Fleet Corporation, of all the claims against Skinner & Eddy. Two actions arising out of these contracts are now pending in the federal court for the Western District of Washington. One is a suit by Skinner & Eddy against the Fleet Corporation begun in 1923 in a state court of Washington and removed to the federal court. In that case, the defendant has moved to dismiss the suit on the ground that the claim sued on is one against the United States.[1] The other action is a suit by the United States against Skinner & Eddy, commenced in the federal court since this petition for a writ of mandamus was filed.

The question whether the writ of mandamus should issue is presented by a demurrer to the plea and traverse which was interposed to the answer. The Supreme Court of the District sustained the demurrer and dismissed the petition without opinion. Its judgment was affirmed by the Court of Appeals of the District, 8 F. (2d) 1011. This Court granted a writ of certiorari. 270 U. S. 636. The Government insists that the petition was properly dismissed, because claims arising out of contracts with the Fleet Corporation are not within the jurisdiction of the Comptroller General; and that even if they were, the relief was properly denied, because his refusal to consider the claims was a disallowance thereof within the meaning of § 951, and thereby the requirement of that section was satisfied. It is conceded that mandamus is an appropriate remedy. Compare *Interstate Commerce Commission* v. *Humboldt S. S. Co.*, 224 U. S. 474.

The first contention involves a determination of the powers and duties of the Comptroller General and of the United States Shipping Board in respect to claims arising out of transactions of the Fleet Corporation. The powers and duties formerly "imposed by law upon the Comptroller of the Treasury or the six Auditors of the Treasury Department" were transferred to the Comptroller General by Act of June 10, 1921, c. 18, Title III, §§ 301-304, 42 Stat. 20, 23, 24, (United States Code, Title 31, § 44). Section 305, amending § 236 of the Revised Statutes, provides: "All claims and demands whatever by the Government of the

[1] In 1923, Skinner & Eddy began still another suit upon the same cause of action, against the United States in the Court of Claims. It was finally allowed to dismiss that suit without prejudice. See *In re Skinner & Eddy Corporation*, 265 U. S. 86.

United States or against it, and all accounts whatever in which the Government of the United States is concerned, either as debtor or creditor, shall be settled and adjusted in the General Accounting Office."[2] The language of this grant, if standing alone, might possibly be broad enough to include authority to audit accounts and to pass upon claims arising out of contracts made by a Government-owned corporation "representing the United States." But here it must be construed in the light of the statutes dealing specifically with the Shipping Board and the Fleet Corporation, of the latter's origin and character and of the administrative practice prevailing with regard to it and other similar corporations.

The Fleet Corporation was organized on April 16, 1917—ten days after the United States declared war. All of its stock was subscribed and paid for by the Shipping Board on behalf of the United States. And all the stock has been held by it since. The company was formed by the Shipping Board pursuant to the specific authority to form one or more corporations, which was conferred by the original Shipping Board Act, September 7, 1916, c. 451, § 11, 39 Stat. 728, 731. Congress conferred this authority in contemplation of the possibility of war, and it required that any such corporation should be dissolved "at the expiration of five years from the conclusion of the present European War." The Fleet Corporation is thus an instrumentality of the Government.

[2]The accounting branch of the Treasury Department was created by the Act of September 2, 1789, c. 12, §§ 1, 3, 5, 1 Stat. 65, 66. Steps in its growth and in the development of its control over Government expenditures may be traced in the Acts of May 8, 1792, c. 37, § 1, 1 Stat. 279; July 16, 1798, c. 85, § 1, 1 Stat. 610; March 3, 1817, c. 45, §§ 1, 3 5, 3 Stat. 366, 367; May 7, 1822, c. 90, 3 Stat. 688; March 30, 1868, c. 36, 15 Stat. 54; June 8, 1872, c. 335, §§ 21 25, 17 Stat. 283, 287 288. In 1894 there was a general revision of the statutes dealing with the accounting officers. Act of July 31, 1894, c. 174, 28 Stat. 162, 205 211. The powers and duties there outlined were in the main those transferred to the General Accounting Office by the Act of 1921.

The question of the jurisdiction of the Comptroller General is not a question as to bookkeeping merely. The decision of the Comptroller General upon the allowance of accounts within his jurisdiction is conclusive upon the executive branch of the Government. Act of July 31, 1894, c. 174, § 8, 28 Stat. 162, 207, following the provisions of the earlier Act of March 30, 1868, c. 36, 15 Stat. 54. Save in cases where resort is had to the courts, therefore, the Comptroller is the final arbiter as to the legality of expenditures. See Annual Report of the General Accounting Office, 1924, p. 3. See St. Louis, Brownsville & M. Ry. Co. v. United States, 268 U. S. 169, 173 174.

See *United States* v. *Walter*, 263 U. S. 15, 18. But it was organized under the general laws of the District of Columbia, as a private corporation, with power to purchase, construct and operate merchant vessels. The Act authorized the Board "to sell with the approval of the President, any or all of the stock of the United States in such corporation, but at no time shall it be a minority stockholder therein." Being a private corporation, the Fleet Corporation may be sued in the state or federal courts like other private corporations; it does not enjoy the priority of the United States in bankruptcy proceedings, *Sloan Shipyards Corporation* v. *United States Shipping Board Emergency Fleet Corporation*, 258 U. S. 549; and its employees are not agents of the United States, subject to the provisions of § 41 of the Criminal Code. *United States* v. *Strang*, 254 U. S. 491. Compare 34 Op. Atty. Gen. 241.

Government-owned private corporations were employed by the United States as its instrumentalities in several other fields during the World War. The Food Administration Grain Corporation (later called the United States Grain Corporation) was organized under the laws of Delaware under the Food Control Act, August 10, 1917, c. 53, § 19, 40 Stat. 276. See Act of March 4, 1919, c. 125, 40 Stat. 1348, and Executive Orders, August 14, 1917, March 4, 1919. The United States Spruce Corporation was organized by the Director of Air Craft Production under the laws of the District of Columbia, pursuant to the Act of July 9, 1918, c. 143, 40 Stat. 845, 888, 889, for the purpose of aiding in the production of aircraft material. The United States Housing Corporation was organized under the laws of the District of Columbia by authority of the President, for the purpose of providing housing for war needs under the Act of June 4, 1918, c. 92, 40 Stat. 594, 595. The War Finance Corporation was organized under the Act of April 5, 1918, c. 45, 40 Stat. 506, to assist financially industries important to the successful prosecution of the War. For many years before the War, the Government had employed the Panama Railroad Company as its instrumentality in connection with the Canal.[8] And, since the

[8]The United States acquired all the stock in the Panama Rail Road Company in order that the railroad, with its adjuncts, might be used in the manner most helpful to the Government in constructing the Canal. See letter of Wm. H. Taft, Secretary of War, in Annual Report of Isthmian Canal Commission, 1904, pp. 13-15; Annual Report of Directors of Panama Rail Road, 1904, pp. 8-9; Annual Report of Isthmian Canal Commission, 1905, p. 18. For a list

War, the Inland Waterways Corporation has been organized by the Secretary of War to operate the Government-owned inland waterways system pursuant to the Act of June 3, 1924, c. 243, 43 Stat. 360. The Government likewise has established, and holds all the stock in the Federal Intermediate Credit Banks, formed under the Act of March 4, 1923, c. 252, § 205, 42 Stat. 1454, 1457, to bring about easier agricultural credits.[4]

At no time, during the War, or since its close, have the financial transactions of the Fleet Corporation passed through the hands of the general accounting officers of the Government or been passed upon, as accounts of the United States, either by the Comptroller of the Treasury or the Comptroller General.[5] The accounts of the Fleet Corporation, like those of each of the other corporations named, and like those of the Director General of Railroads during Federal Control,[6] have been audited, and the control over their financial transactions has been exercised, in accordance with commercial practice, by the board or the officer charged with the responsibilities of administration.[7] Indeed, an important if not the chief reason for employing these incorporated agencies was to enable them to employ commercial methods and to conduct their operations with a freedom supposed to be inconsistent with accountability to the Treasury under its established procedure of audit and control over the financial transactions of the United States.[8] It is true that a kind of audit of the Fleet Corporation's transactions was later made by the general accounting officers pur-

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of the functions performed through the agency of the Rail Road, see Annual Report of Governor of Panama Canal, 1921, Chart facing p. 55. See also Panama Canal Act, August 24, 1912, c. 390, § 6, 37 Stat. 560, 563-564. On the auditing of Rail Road accounts, see Annual Report of Isthmian Canal Commission, 1905, p. 179; Annual Report of Governor of Panama Canal, 1915, p. 42.

[4]The Government also held over 98% of the stock in the Federal Land Banks, when they were first created under the Act of July 17, 1916, c. 245, § 5, 39 Stat. 360, 364, but its holding now amounts to less than 2%. See Annual Reports of the Secretary of the Treasury, 1917, p. 38; 1926, p. 106.

[5]See Annual Report of Comptroller of the Treasury, 1919, pp. 23-26.

[6]See the Federal Control Act, March 21, 1918, c. 25, § 12, 40 Stat. 451, 457.

[7]The accounts of the Housing Corporation were handled by the Comptroller of the Treasury and his successors after the passage of the Act of July 11, 1919, c. 6, 41 Stat. 35, 55-56, providing that the funds of the Corporation be covered into the Treasury.

[8]See e. g. Annual Report of Inland Waterways Corporation, 1925, pp. 2-3.

suant to special legislation, said to have been enacted at the request of the Shipping Board. But there is no contention that these statutes, or the audit made thereunder, affect in any way the question here presented,[9] save that they may show Congressional approval of the practice theretofore prevailing. It may be that the other corporations above-mentioned expended no moneys appropriated by Congress save those received from the sale of stock to the Government, whereas the Fleet Corporation had the benefit of money appropriated to the Shipping Board and by it turned over to the Corporation.[10] The first statute making such an appropriation, however, provided in terms that the moneys were to be expended "as other moneys of said corporation are now expended." Act of June 15, 1917, c. 29, 40 Stat. 182, 183.

The transactions of the Fleet Corporation arose out of the exercise of powers conferred upon it in several different ways. It was

[9]The Appropriation Act of July 1, 1918, c. 113, 40 Stat. 634, 651 directed the Secretary of the Treasury "to cause an audit to be made of the financial transactions of the United States Shipping Board Emergency Fleet Corporation, under such rules and regulations as he shall prescribe"; the Appropriation Act of March 20, 1922, c. 104, 42 Stat. 437, 444, directed the Comptroller General to make such audit, commencing July 1, 1921, "in accordance with the usual methods of steamship or corporation accounting and under such rules and regulations as he shall prescribe." These special audits were of a nature to afford some information concerning past transactions. But the Acts did not vest control over expenditures either in the Secretary of the Treasury or in the General Accounting Officer making the audit; and none was asserted. The nature, occasion and purpose of these special audits is set forth in the Annual Reports of the Comptroller of the Treasury, 1919, pp. 23-26; 1920, pp. 24-41; and in the Annual Reports of the General Accounting Office, 1923, p. 34; 1924, p. 12; 1926, pp. 45-46.

[10]See, in addition to the appropriation act referred to in the text, the Acts of October 6, 1917, c. 79, 40 Stat. 345; July 1, 1918, c. 113, 40 Stat. 624, 650; June 5, 1920, c. 235, 41 Stat. 874, 891; March 4, 1921, c. 161, 41 Stat. 1367, 1382; August 24, 1921, c. 89, 42 Stat. 192; June 12, 1922, c. 218, 42 Stat. 625, 647-648; February 13, 1923, c. 72, 42 Stat. 1227, 1241-1242; June 7, 1924, c. 292, 43 Stat. 521, 530-531; March 3, 1925, c. 468, 43 Stat. 1198, 1209-1210. The last four of the appropriation acts referred to provide that "No part of the sums appropriated . . . shall be available for the payment of certified public accountants . . . and all auditing of every nature requiring the services of outside auditors shall be furnished through the Bureau of Efficiency: *Provided*, that nothing herein contained shall limit the . . . United States Shipping Board Emergency Fleet Corporation from employing outside auditors to audit claims in litigation for or against the . . . Corporation."

urged in the argument that the question of the jurisdiction of the Comptroller General would depend upon the source of the power giving rise to the transactions under consideration, because of certain special statutory provisions as to compensation for claimants, now to be considered. Besides powers conferred by the general incorporation laws of the District of Columbia, the Fleet Corporation was vested, by delegation from the President,[11] with the powers conferred upon him by Acts of June 15, 1917, c. 29, 40 Stat. 182; April 22, 1918, c. 62, 40 Stat. 535; and November 4, 1918, c. 201, 40 Stat. 1020, 1022. Among them were the power to construct vessels and the power to modify, suspend, cancel or requisition existing or future contracts for the construction of vessels. The Act of June 15, 1917 provided also that when the United States should cancel or requisition any contract, it should make just compensation to be determined by the President; and that, if the persons concerned were dissatisfied with that determination, 75 per cent. of the amount so determined was to be paid; and that suit for the additional amount claimed might be brought against the United States, in the manner provided in § 24 (20) and § 145 of the Judicial Code. The Merchant Marine Act 1920, June 5, 1920, § 2, 41 Stat. 988, repealed the provisions of the Acts of 1917 and 1918 above referred to, but it preserved all rights and remedies accruing as a result of any action taken under the provisions repealed; provided by § 2 (b) for their enforcement as though the Act had not been passed, except that, as provided in § 2 (c), the Shipping Board should as soon as practicable "adjust, settle, and liquidate all matters arising out of or incident to the exercise by or through the President of any of the powers or duties conferred or imposed upon the President by any such Acts or parts of Acts; and for this purpose the board, instead of the President, shall have and exercise any such powers and duties relating to the determination and payment of just compensation: *Provided*, that any person dissatisfied with any decision of the board shall have the same right to sue the United States that he would have had if the decision had been made by the President of the United States under the Acts hereby repealed."

The claims of Skinner & Eddy were mainly for the cancellation by the Fleet Corporation of contracts for the construction of vessels.

[11] See Executive Orders, No. 2664, July 11, 1917; No. 2888, July 18, 1918; No. 3018, Dec. 3, 1918.

The Government contends that the contract giving birth to th claims arose out of or was incident to the exercise by or through the President of the powers conferred upon him by the statutes re ferred to in § 2 (c) of the Merchant Marine Act, 1920, and, hence that the Shipping Board, and not the Comptroller General, ha the power and duty to settle and adjust them and thus to allow or disallow any claims by way of credits or set-offs arising out of th contracts. Skinner & Eddy urge that their contracts were made b virtue of the power conferred upon the Fleet Corporation by th Shipping Act of 1916; that a controversy arising out of such con tracts is not within § 2 (c) of the Merchant Marine Act, 1920; an that, hence, the Comptroller General had jurisdiction over its claim We have no occasion to determine whether the contracts here i question were made under the original charter power of the Flee Corporation or under the additional powers acquired by deleg tion from the President. Even if § 2 (c) has no application, becau the contracts were not entered into pursuant to the power del gated by the President in 1917, it does not follow that the claim fall within the jurisdiction of the Comptroller General. For th Fleet Corporation is an entity distinct from the United States an from any of its departments or boards; and the audit and contr of its financial transactions is, under the general rules of law an the administrative practice, committed to its own corporate office except so far as control may be exerted by the Shipping Boar If, on the other hand, the contracts were made and cancelled by t Fleet Corporation under the power delegated by the President, t settlement and adjustment of the claim falls clearly within t powers conferred by § 2 (c) upon the Shipping Board.

There is nothing in the language of the statutes, or in reason, t support the suggestion that the Shipping Board has the power adjust claims, but that the adjustment does not become operati unless there is approval of the final settlement by the Comptroll General. Nor is there any basis for the further suggestion Skinner & Eddy that the Shipping Board has power to make sett ment, if it can; but where a settlement is not made and a suit the United States is brought or threatened, the Comptroller G eral is the official to whom must be presented all claims for cre in such suit. It is true that the Merchant Marine Act did modify § 951 of the Revised Statutes or impair the right of a

fendant to a credit if sued by the United States upon a Fleet Corporation contract. Since the passage of the Merchant Marine Act, as before, the defendant may set up the credit, if he can show disallowance by the appropriate accounting officers. But § 951 does not prescribe who the appropriate officer is or that the claim must be presented to a general accounting officer of the Government. As was held in *United States* v. *Kimball*, 101 U. S. 726, the requirement of the section is satisfied when the claim is presented and disallowed by the officer who has power to allow the claim, although he is not a general accounting officer of the Government.

The Court of Appeals of the District based its judgment of affirmance solely upon the ground that, since the claims involved were already in the course of litigation in two suits in another federal court, no other court of coordinate jurisdiction could interfere. The Comptroller General had originally taken a somewhat similar ground for declining to act. But later he stated, in the trial court, that his answer should be taken as broadly denying his jurisdiction to consider claims of this nature. And, in this Court, he specifically disclaimed reliance upon the ground taken by the Court of Appeals. We have no occasion to consider its validity. Nor need we consider whether the refusal of the Comptroller General to take jurisdiction was a disallowance of the claim within the meaning of § 951 or any of the other questions which have been argued concerning the application of that section.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.